

**EXHIBIT TO DECEMBER 10, 2007  
DECLARATION OF PHILIP R. HOFFMAN  
IN OPPOSITION TO DEFENDANT'S  
MOTION  
FOR A PRELIMINARY INJUNCTION**

**PHAT FASHIONS LLC v. TORNADO  
IMPORTS (CANADA), INC.**  
**Case No.: 07 Civ. 3278 (PAC)**

**EXHIBIT 54**

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 PHAT FASHIONS, LLC,

5

6 Plaintiff,

7 -against-

8 TORNADO IMPORTS (CANADA), INC.,

9

10 Defendants.

11 ----- x

12 DEPOSITION of the Plaintiff, PHAT FASHIONS,  
13 LLC, by BERNT ULLMANN, taken by the Defendant  
14 pursuant to Notice, held at the offices of Gibson  
15 Dunn & Crutcher, 202 Park Avenue, New York, New  
16 York 10166, on November 1, 2007, at 9:23 a.m.,  
17 before a Notary Public of the State of New York.

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22 BARRISTER REPORTING SERVICE, INC.

23 - 120 Broadway

24 New York, N.Y. 10271

25 212-732-8066



<p>1 2 APPEARANCES: 3 4 PRYOR CASHMAN, LLP 5 Attorneys for Plaintiff 6 410 Park Avenue 7 New York, New York 10022 8 9 BY: PHILIP R. HOFFMAN, ESQ. 10 11 GIBSON DUNN &amp; CRUTCHER 12 Attorneys for Defendant 13 202 Park Avenue 14 New York, New York 10166 15 BY: ADAM H. OFFENHARTZ, ESQ. 16 -and- 17 LAURA M. LEITNER, ESQ. 18 19 xxxxx 20 21 22 23 24 25</p>	<p>2 3 B. Ullmann 4 BERN TULLMANN, 5 Having been first duly sworn before a Notary 6 Public of the State of New York, was 7 examined and testified as follows: 8 9 EXAMINATION BY 10 MR. OFFENHARTZ: 11 Q. What is your name? 12 A. Bernt Ullmann. 13 Q. What is your address? 14 A. 512 Seventh Avenue, New York, New 15 York 10018. 16 Q. Mr. Ullmann, good morning. 17 A. Good morning. 18 Q. As I suspect you already known by 19 now, I'm Adam Offenhartz. I'm a litigator 20 with Gibson Dunn &amp; Crutcher. With me, is 21 my colleague Laura Leitner. We represent 22 Tornado in the litigation that you and 23 your company brought. 24 Thank you for scheduling this 25 today, for getting here. I'm going to ask you a series of questions. If you don't understand my questions, if you need</p>
<p>1 2 3 STIPULATIONS 4 5 IT IS HEREBY STIPULATED AND AGREED by and 6 between the attorneys for the respective parties 7 herein, that filing, sealing and certification, and 8 the same are, hereby waived. 9 10 IT IS FURTHER STIPULATED AND AGREED that 11 all objections except as to the form of the 12 question, shall be reserved to the time of the 13 trial. 14 15 IT IS FURTHER STIPULATED AND AGREED that 16 the within deposition may be signed and sworn to by 17 an officer authorized to administer an oath, with 18 the same force and effect as if signed and sworn to 19 before the Court. 20 21 22 23 24 25</p>	<p>3 5 1 B. Ullmann 2 anything amplified, clarified, please let 3 me know. 4 If you need to take a break, please 5 let me know. We'll take periodic breaks 6 throughout the day. The only thing I'd 7 ask is: Please let's not take a break 8 while a question is pending. That's 9 really about it for any beginning issues. 10 If you have any questions along the 11 way or if there is a time you need to 12 leave by or anything of that nature, we 13 can discuss that during the break. We'll 14 do our best to accommodate you. I know 15 you're scheduled as needed for today and 16 tomorrow. 17 MR. HOFFMAN: Do we have an 18 agreement as to the stipulations; 19 usual stips on the record, all 20 objections except as to form are 21 reserved? 22 MR. OFFENHARTZ: Yes. 23 Q. Mr. Ullmann, what is your current 24 position? 25 A. I'm president of Phat Fashions, a</p>

<p>1 B. Ullmann 2 company that is owned by Kellwood. 3 Q. How long have you been at Phat 4 Fashions? 5 A. Since February 2004. 6 Q. Did you become the president in 7 February '04? 8 A. Yes. 9 Q. Before that, where were you? 10 A. At a different company, called 11 GTFM. 12 Q. I'm sorry? 13 A. GTFM. 14 Q. Did GTFM have any connection with 15 Phat Fashions? 16 A. Only indirectly as a licensee for 17 Phat Farm products in Europe. 18 Q. Did GTFM have any connections with 19 Kellwood? 20 A. They did not. 21 Q. How long were you at GTFM? 22 A. Five years. 23 Q. Prior to that, where did you work? 24 A. Prior to that, Donna Karan. 25 Q. By the way, what titles did you</p>	<p>6 1 B. Ullmann 2 A. That is correct. 3 Q. Were you hired, in effect, by 4 Kellwood to become the president of Phat 5 Fashions or were you the president of Phat 6 Fashions and then Kellwood showed up, 7 oddly enough, a day later and bought the 8 company? 9 A. I was hired by Kellwood. 10 Q. What was the process by which you 11 were hired? 12 A. It was done through, firstly, a 13 recommendation from someone I trust as 14 Steven Russo, who was president of 15 womenswear for Kellwood at the time. He 16 placed a phone call. 17 It was followed up by Kellwood's 18 in-house -- what should we call him -- 19 he's an in-house recruiter. His name is 20 Barry Ansell, A-N-S-E-L-L. 21 Q. Can you tell me at the time you 22 joined Phat Fashions, what the management 23 structure of Phat Fashions was? 24 A. Could you restate the question, 25 please?</p>
<p>7 1 B. Ullmann 2 have at GTFM? 3 A. President FUBU International. And 4 for last year and-a-half, managing 5 director, Coogi. That's C-O-O-G-I. 6 Q. Can you briefly describe your 7 education? 8 A. I have an MBA from Copenhagen 9 School of Economics. That's in Denmark. 10 Q. What year did you get the MBA? 11 A. 1985, I want to say. 12 Q. Did you receive an undergraduate 13 degree sometime before that? 14 A. That is normally the requirements, 15 yes, I did. 16 Q. What year and where did you get 17 that? 18 A. Also I have, I guess, the public 19 would be a PS and I believe it must have 20 been in '83, two years. Yes. 21 Q. When did Phat Fashions become owned 22 by Kellwood? 23 A. February 2004. 24 Q. At the same time as you came in to 25 become the president of Phat Fashions?</p>	<p>9 1 B. Ullmann 2 Q. Certainly. When you became the 3 president of Phat Fashions in 4 February 2004, who were the other 5 officers? 6 A. Russell Simmons was the CEO of Phat 7 Fashions. I reported to Russell and to 8 Bob Skinner, who is now chairman of 9 Kellwood. 10 Q. In February of 2004, Russell 11 Simmons was the CEO you said you reported 12 to, correct? 13 A. Yes. 14 Q. Did Bob Skinner have a role at Phat 15 Fashions? 16 A. Yes. 17 Q. What was his role at Phat Fashions? 18 A. He was Russell's boss. 19 Q. At Phat Fashions or at Kellwood? 20 A. My view, but only my view -- I am 21 not certain how it is formally 22 structured -- is that Bob, in his capacity 23 at Kellwood, was the most senior officer 24 of Phat Fashions. 25 Q. What was Bob Skinner's capacity at</p>

10

1 B. Ullmann

2 Kellwood?

3 A. Back then, he was the president --

4 I want to say president of Kellwood.

5 Q. Is Russell Simmons still the CEO of

6 Phat Fashions today?

7 A. He is not.

8 Q. Who is the CEO of Phat Fashions

9 today?

10 A. No one is formally holding the CEO

11 title.

12 Q. Is there someone that acts as the

13 CEO of Phat Fashions?

14 A. I report to the company and I

15 report to Bob Skinner.

16 Q. When did Russell Simmons leave the

17 company?

18 A. August of this year.

19 Q. Immediately prior to Russell

20 Simmons' departure from the company, was

21 he still the CEO of the company?

22 A. He held the title of a CEO. He was

23 not the CEO in your traditional

24 understanding of the title.

25 Q. What is your traditional

1 B. Ullmann

2 work?

3 A. That's one of the things I'm

4 saying, yes, sir.

5 Q. What are the other things you're

6 saying?

7 A. I think if you're going to fulfill

8 your functions as a CEO, you would need to

9 have a clear understanding of the

10 financial performance of the organization.

11 And I am not certain that Mr. Simmons was

12 focusing on that. As I did say, he was a

13 great brand visionary.

14 Q. When you joined Phat Fashions in

15 February 2004, were there other senior

16 officers?

17 A. How do you define senior officers?

18 Q. How do you define senior officers?

19 You're running the company; who are your

20 senior officers today?

21 A. There is a CFE, chief financial

22 executive. We had a president of

23 licensing. I would say that probably

24 qualifies as a senior officer. But define

25 officer for me.

11

1 B. ULLMANN  
2 understanding of the title?  
3 A. My view of a CEO is someone that is  
4 hands-on and shows up for work every day.  
5 And is executing leadership. He was not  
6 leading the company.  
7 Q. You felt he wasn't doing a good  
8 job?  
9 MR. HOFFMAN: Objection to  
10 the form. You can answer.  
11 A. Ask me again.  
12 Q. Did you think Mr. Simmons was doing  
13 a good job as CEO prior to his departure?  
14 A. My view is that the CEO was the CEO  
15 title. By traditional standards of CEO,  
16 no, he was not. As a brand visionary -- a  
17 founder, brand visionary and had celebrity  
18 endorsement of the brand for many years,  
19 he did.  
20 Q. What are the traditional functions  
21 of a CEO that you thought he wasn't  
22 fulfilling?  
23 A. As I said, I think one of the  
24 requirements is a presence in the office.  
25 Q. You're saying he didn't come to

1 B. Ullmann  
2 Q. How do you use the word officer?  
3 You're running this company; how do you  
4 use the word officer?  
5 A. To me, an officer is someone that  
6 has the ability to bind or oblige the  
7 company and as such, there were only two  
8 individuals that filled that role fully  
9 and that was Russell Simmons and Bob.  
10 Thirdly, would be myself, but I would not  
11 bind the company to the extent at all over  
12 Russell Simmons or Bob Skinner.  
13 Q. Mr. Ullmann, can you tell me who  
14 Jan Wootton is?  
15 A. An individual that works at  
16 Kellwood legal.  
17 Q. Is Jan Wootton a man or a woman?  
18 A. I'm not certain.  
19 Q. Is Jan Wootton a lawyer?  
20 A. I'm not certain.  
21 MR. HOFFMAN: I can help you  
22 if you want it or not.  
23 MR. OFFENHARTZ: Please.  
24 MR. HOFFMAN: I believe I  
25 understand that Jan Wooten is a

<p>1 B. Ullmann 2 female and is a paralegal. 3 Q. I take it you do not have a lot of 4 contact with Ms. Wotton? 5 A. I do not. 6 Q. By the way, what is the office of 7 Phat Fashions, please? 8 MR. HOFFMAN: Location? 9 MR. OFFENHARTZ: The 10 location. 11 Q. The address of the office of Phat 12 Fashions. 13 A. 512 Seventh Avenue. 14 Q. What's your phone number at Phat 15 Fashions? 16 A. (212)798-3100. 17 Q. Do you have a direct dial? 18 A. I do. 3101. 19 Q. Where is Kellwood located? 20 A. 420 Fifth Avenue. 21 Q. Here in Manhattan? 22 A. Yes.. That would be their -- let me 23 be more specific. 24 Q. Please. 25 A. Kellwood is headquartered in St.</p>	<p>14 1 B. Ullmann 2 once again, we're talking about a 3 paralegal. 4 MR. OFFENHARTZ: Thank you. 5 Q. Can you please tell me who Annie 6 Walker is? 7 A. I'm not familiar with the name. 8 Q. Mr. Ullmann, can you tell me who 9 Gaby Bitton is? 10 A. He's the owner of a company called 11 Buffalo Jeans. 12 Q. When did you first become aware of 13 Gaby Bitton? 14 A. I think in the fall of 2006. 15 Q. Under what circumstances did you 16 become aware of Mr. Bitton, Buffalo Jeans? 17 A. Bob Skinner introduced him to me. 18 Q. Was this introduce by phone, in 19 person? 20 A. By phone. 21 Q. Do you know what Mr. Skinner told 22 you about Mr. Bitton and Buffalo Jeans in 23 advance of this phone introduction? 24 A. My understanding was that Bob 25 Skinner had had an exploratory meeting</p>
<p>1 B. Ullmann 2 Louis, but their corporate office in New 3 York, the office that Bob works out of 4 most of the time is 420 Fifth Avenue. 5 Q. Can you tell me, please, who Cathy 6 McGuiness is? 7 A. She is my assistant. 8 Q. How long has she been your 9 assistant? 10 A. Maybe two years. 11 Q. Who was your assistant prior to 12 that? 13 A. Judith Parker. 14 Q. Can you please tell me who Cory 15 Isom is? 16 A. I believe Cory Isom is an 17 individual that either works or worked at 18 Kellwood legal. 19 Q. Do you know in what capacity they 20 worked or work at Kellwood legal? 21 A. I do not. 22 Q. You don't know if they were a 23 lawyer or paralegal? 24 A. I do not. 25 MR. HOFFMAN: I believe,</p>	<p>15 1 B. Ullmann 2 with Gaby Bitton in Canada and at the time 3 he had been impressed by Mr. Bitton's 4 operation and infrastructure and he 5 brought Mr. Bitton to my attention. 6 Q. Do you recall when Mr. Skinner had 7 that meeting with Mr. Bitton? 8 A. I don't know when that meeting took 9 place. 10 Q. Obviously sometime prior to your 11 introductory call in February of 2006? 12 A. I don't believe the call took place 13 in February of 2006. 14 MR. HOFFMAN: I think he 15 said the fall. 16 Q. I stand corrected, you did say fall 17 2006. 18 A. It stands to reason, as you said, 19 sometime before fall, but I don't know. 20 Q. Do you keep a calendar; do you jot 21 down in a calendar, either paper or 22 electronic, your schedules of phone calls? 23 A. I do not. 24 Q. Do you take notes when you're on 25 the phone usually?</p>

<p style="text-align: right;">18</p> <p>1                   B. Ullmann  2   A.   I do not.  3   Q.   As a practice or sometimes you do  4   and sometimes you don't?  5   A.   Very rarely, I do.  6   Q.   Do you recall taking any notes of  7   your meetings with Mr. Skinner regarding  8   Mr. Bitton?  9   A.   No.  10   Q.   Do you know how long that  11   conversation took?  12   A.   I do not.  13   Q.   In the fall of 2006, did you have a  14   licensee in Canada?  15   A.   Yes.  16   Q.   Who was that licensee?  17                    MR. HOFFMAN: Objection to  18                    the form.  19   Q.   You can answer.  20   A.   It was Tornado.  21   Q.   How long was that introductory  22   phone call you had with Mr. Bitton in the  23   fall of 2006?  24   A.   I think I need to clarify  25   something: I cannot recall that there was</p>	<p style="text-align: right;">20</p> <p>1                   B. Ullmann  2   conversation; I don't recall how long.  3   Q.   What was the follow-up after that  4   initial call?  5   A.   I want to say probably just saying  6   in touch, phone calls back and forth  7   informally. At one point, we met in New  8   York; I do not recall when that was.  9   Q.   Do you recall the substance of the  10   initial phone call you had with  11   Mr. Bitton?  12   A.   The first phone call was simply  13   introductory. Bob Skinner, my boss, said,  14   There is someone in Canada that I would  15   like you to introduce yourself to, so  16   that's what I did.  17   Q.   Do you recall what the next phone  18   calls covered?  19   A.   The phone calls evolved into two  20   conversations. One about the state of our  21   business in Canada and Mr. Bitton's view  22   of how it ran was poorly managed and  23   represented.  24                    And another conversation about a  25   possible retail collaboration for the</p>
<p style="text-align: right;">19</p> <p>1                   B. Ullmann  2   an actual introductory phone call. I  3   think maybe Bob, when I said introduced, I  4   meant introduced as a concept. As a  5   party, as an individual; not a formal  6   introduction.  7                    More along the lines, there is a  8   fellow named Gaby Bitton, he owns a  9   company called Buffalo Jeans, this is his  10   number. I do not recall a formal  11   introduction on the phone.  12   Q.   Thank you for that clarification.  13   This first call that you had with  14   Mr. Bitton, should I take it then that  15   Mr. Skinner was not on the call?  16   A.   Correct.  17   Q.   Do you recall how long that first  18   conversation you had with Mr. Bitton was?  19   A.   I don't.  20   Q.   Was it an hour discussion?  21   A.   Clearly not.  22   Q.   If it clearly wasn't an hour, how  23   clearly long was it?  24   A.   It was clearly a brief  25   conversation. It was a brief</p>	<p style="text-align: right;">21</p> <p>1                   B. Ullmann  2   United States.  3   Q.   At what point did you begin  4   discussing a licensing agreement with Mr.  5   Bitton in Canada?  6   A.   I don't recall.  7   Q.   At what point did you begin  8   discussing the possible retail  9   collaboration in the U.S.?  10   A.   Again, I don't recall. Other than  11   these conversations were more or less  12   concurrent because it appears that  13   proprietary retail is an integral part of  14   how Mr. Bitton is growing the Buffalo  15   Jeans brand.  16   Q.   What do you mean by proprietary  17   retail?  18   A.   I mean monomark or flagship-type of  19   stores that only carry one brand. In this  20   case, they have Buffalo Jeans stores; they  21   only carry Buffalo Jeans. I was  22   interested in getting the world of Phat  23   represented in its own retail environment.  24   Q.   You wanted the world of Phat, as  25   you put it, to have its own world of Phat</p>

1 B. Ullmann 2 stores, if you will? 3 A. Correct. 4 Q. How many conversations did you have 5 with Mr. Bitton from the fall of 2006 6 through January 1, 2007? 7 A. I don't recall how many, but I 8 would say there are several. So it's not 9 one or two; there's more than one or two. 10 Q. Less than 50? 11 A. Clearly. 12 Q. You entered into a licensing 13 agreement with Mr. Bitton and Buffalo 14 Jeans of Canada, haven't you? 15 MR. HOFFMAN: Objection to 16 the form. 17 Q. You can answer. 18 A. Yes. 19 Q. Do you know when you executed that 20 agreement? 21 A. It was executed over the last 22 couple of months. 23 Q. Can you be more specific? 24 A. No. 25 Q. Did you also execute an agreement	22 1 B. Ullmann 2 will commence January 1, '08. 3 Q. What is the name of the entity that 4 you executed an agreement with for the 5 license in Canada? 6 A. Without checking my reports, I 7 don't know. 8 Q. It is a company owned or controlled 9 by Gaby Bitton? 10 MR. HOFFMAN: Objection to 11 the form. 12 Q. You can answer. 13 A. I cannot say if it's controlled by 14 Gaby Bitton. He is a part-owner. 15 Q. Who runs the company that you just 16 signed a licensing agreement with for 17 Canada? 18 A. My understanding is that the 19 current CEO is Isaac Stern. 20 Q. You kind of chuckled and said 21 "current CEO." Are you expecting a change 22 eminently? 23 A. No. 24 Q. Was Mr. Stern just recently 25 appointed in that position?
23 1 B. Ullmann 2 regarding a retail collaboration in the 3 U.S.? 4 A. Yes. 5 Q. Was that executed contemporaneously 6 with the licensing agreement? 7 A. It was intended to, but no. And 8 that agreement, I want to say, was 9 executed maybe a month ago. 10 Q. Who is Marc Kakon? 11 A. He works at the company called 12 Algo. 13 Q. Can you tell me what Algo does? 14 A. My understanding is that Algo is a 15 multi-brand publicly-trading company in 16 Canada. They were introduced through Gaby 17 Bitton. 18 Q. They were introduced to Gaby 19 Bitton? 20 A. No, they were introduced to us 21 through Gaby Bitton. 22 Q. Are you doing any business with 23 Algo at this time? 24 A. I believe Algo is a part-owner of 25 the entity that now holds the license that	23 1 B. Ullmann 2 was not involved in the early 3 negotiations, but have come in forcefully 4 and assumed control of the leadership of 5 that company. 7 Q. If you need to talk with someone at 8 this entity with which you entered a 9 licensing agreement in Canada because you 10 have a concern or an issue that you'd like 11 to discuss, who do you call? 12 A. Isaac or Gaby. 13 Q. Who is Rosa Costa? 14 A. I don't know. 15 Q. Do you know a Dan Elituv? 16 A. I have met a Dan during some of my 17 meetings with our new licensee; I don't 18 know if his last name is Elituv. 19 Q. You understand that Dan works at 20 your licensee? 21 A. I have met a Dan that works at the 22 licensee. 23 Q. Do you know where Russell Simmons 24 is now? 25 MR. HOFFMAN: At this

<p>1                   B. Ullmann  2 Tornado, didn't you?  3 A. Yes.  4 Q. You, of course, I mean Phat  5 Fashions?  6 A. Correct.  7 Q. Why did you file that lawsuit?  8 A. Simply to receive a clarification  9 of what we believe to be the facts of our  10 relationship.  11 Q. What are those facts, as you  12 understand them, in your perspective?  13 A. Understood. The fact, in my view,  14 is that Tornado has a licensing agreement  15 for certain Phat Farm products and this  16 agreement is set to expire at the end of  17 2007. Those are the facts as I see them.  18 Q. You mentioned that you think the  19 claims and defenses brought by my client  20 are, and we can check it, was either  21 insincere or insignificant?  22                   MR. HOFFMAN: Objection to  23 the form. I don't think that the  24 words "claims" and "defenses" and  25 the like; he said whatever it was</p>	<p>34</p> <p>1                   B. Ullmann  2 A. Several. Again, more than two;  3 less than ten.  4 Q. When did these several  5 conversations take place?  6 A. I want to say that they started  7 either at or right at the MAGIC trade show  8 in February of 2007.  9 Q. At or before the MAGIC trade show  10 Issie Wiseman indicated to you that he  11 understood you weren't renewing the  12 licensing agreement?  13                   MR. HOFFMAN: In 2007,  14 because we have two MAGIC shows, we  15 should be clear about which one  16 we're talking about.  17                   MR. OFFENHARTZ: Fair point.  18                   Thank you.  19 Q. Mr. Ullmann, which MAGIC show were  20 you referring to in your last answer?  21 A. The one in February 2007.  22 Q. The several conversations you're  23 talking about, when do you think they  24 began?  25 A. Either end of January or beginning</p>
<p>35</p> <p>1                   B. Ullmann  2 that he said.  3                   MR. OFFENHARTZ: Let me  4 rephrase.  5 Q. I think you said Mr. Wiseman's case  6 is insignificant or insincere?  7 A. Right.  8                   MR. HOFFMAN: Same objection  9 to form. He said what he said.  10 Q. Can you please elaborate on that?  11 A. My view, based upon my  12 conversations with Issie Wiseman, is that  13 he full-well recognizes that his agreement  14 expires. On a number of occasions, he  15 recognized it. On a number of occasions  16 he said, "Well, if there's something those  17 guys don't really do a lot in handbags,  18 maybe I can continue with the handbags;  19 what do you think?"  20                   Conversations like that clearly  21 have led me to know, for a fact, that he  22 agrees and recognizes that his agreement  23 expires.  24 Q. How many conversations are we  25 talking about here?</p>	<p>37</p> <p>1                   B. Ullmann  2 of February 2007, I believe.  3 Q. When did you first inform, to your  4 recollection, Mr. Wiseman that you would  5 not be extending the licensing agreement?  6 A. I cannot recall this fully, but I  7 believe, again, it was around the same  8 time. Some weeks prior to the MAGIC show  9 in February of '07.  10 Q. Your recollection is that late  11 January or early February, you informed  12 Mr. Wiseman that you were not renewing the  13 extension?  14                   MR. HOFFMAN: Objection to  15 the form.  16 A. Yes, and it's not -- you said  17 reviewing the extension? I never viewed  18 it as renewing any extension. It was, we  19 were not amending the agreement. The  20 agreement was set to expire at the end of  21 December of 2007. There were no renewals  22 left; it could not be renewed.  23 Q. You had agreed to the form of an  24 amendment extending the agreement, hadn't  25 you?</p>

1 B. Ullmann 2 issue. That didn't happen. 3 Furthermore, in order for this to 4 be a binding document, not only did an 5 agreement have to be signed by both 6 Russell Simmons and Bob Skinner, it also 7 had to be delivered back to the licensee, 8 Tornado. None of which happened. And 9 there was no legal amendment. I was free 10 to proceed. 11 Q. You recall Mr. Rollins telling you 12 that it had to be executed and returned, 13 or do you recall discussing that with 14 Counsel in preparation for this 15 deposition? 16 A. I do recall discussing this with 17 Counsel in preparation. I cannot recall 18 if it's independent recollection. 19 Q. You said it was highly unusual for 20 Mr. Wiseman to sign the agreement? 21 A. No, I didn't say that. 22 Q. Please tell me what you said. 23 A. I said it's highly unusual for any 24 licensee to sign a draft amendment as 25 opposed to an execution agreement.	46 1 B. Ullmann 2 that it's important for a CEO, for a 3 leader of a company, to be present and to 4 be involved. 5 I'm trying to understand if you, 6 as the president of Phat Fashions, if your 7 understanding was the company's 8 understanding? 9 MR. HOFFMAN: Objection to 10 the form. That question is -- 11 wait. 12 MR. OFFENHARTZ: You stated 13 your objection. No speaking 14 objections. 15 MR. HOFFMAN: I'm not giving 16 a speaking objection, but I'm not 17 finished with my objection to form. 18 There is a question pending, 19 but the entire prologue to the 20 question, I'm objecting to. 21 Whatever he's testified to, he has 22 testified to. If he understands 23 the question you just asked that 24 was actually the question, that's 25 fine.
47 1 B. Ullmann 2 Q. You viewed the document that 3 Mr. Wiseman signed as simply a draft that 4 was something the parties would continue 5 to negotiate, work on, play with and move 6 forward with or not, correct? 7 A. That is correct. 8 Q. At the time you were the president 9 of Phat Fashions, right? 10 A. Correct. 11 Q. Clearly your understanding is that 12 your law firm, your colleagues would have 13 had the same understanding that this 14 document that Issie Wiseman signed was 15 just a draft, has no meaning, has no 16 bearing; it's nothing, right? 17 MR. HOFFMAN: Objection to 18 the form. How can he testify about 19 other people's understandings? 20 Q. Mr. Ullmann, you testified that 21 Mr. Simmons didn't show up for work. You 22 testified that Mr. Simmons, in many 23 respects, was not a good CEO. You 24 testified that Mr. Simmons violated the 25 Kellwood code of conduct. You testified	49 1 B. Ullmann 2 I have an objection to form, 3 but he can answer. Can we have 4 just the question read back. 5 MR. OFFENHARTZ: Let me move 6 on to another version. 7 Q. Given that you were the president 8 of Phat Fashions, wouldn't it be your 9 understanding, or your expectation, that 10 your Counsel would agree with you that it 11 was highly unusual for Issie Wiseman to 12 sign a draft and would consider it a 13 document still very much open to further 14 negotiation? 15 MR. HOFFMAN: Objection to 16 the form. 17 A. I can't speak to how Counsel felt 18 or thought my view was; it was very 19 much open to continue dialogue. 20 Q. Given your perspective that it was 21 very unusual for Mr. Wiseman to sign this 22 document, wouldn't you expect that your 23 colleagues at Phat Fashions would have a 24 similar view? 25 MR. HOFFMAN: Objection to

<p>1                   B. Ullmann  2                   the form.  3   A. Again, I have no opinion about what  4   my colleagues thought or didn't think. I  5   cannot comment on their thoughts. I can't  6   speculate on what they thought.  7   Q. During the period with which you  8   were having, what you call, a dialogue  9   over the draft -- your language -- that  10   Mr. Wiseman signed; what conversations did  11   you have with Counsel regarding that?  12                    MR. HOFFMAN: "That" being?  13   Q. That draft, as you describe it?  14   A. Not a lot.  15   Q. Tell me about the ones you did  16   have.  17   A. I cannot recall any individual  18   dialogue referring to the draft. I can  19   only recall some of the dialogue with  20   Mr. Wiseman.  21   Q. Who led the dialogue, as you  22   described it, with Mr. Wiseman regarding a  23   possible -- your language -- renewal of  24   the license agreement with Tornado?  25                    MR. HOFFMAN: Objection to</p>	<p>50</p> <p>1                   B. Ullmann  2   Q. Of this week?  3   A. Yes.  4   Q. For how long?  5   A. Maybe a couple of hours.  6   Q. Two days ago?  7   A. Yes, a couple of hours.  8   Q. Two hours?  9   A. Two hours.  10   Q. Two to three hours, one to two  11   hours?  12   A. Two to three hours.  13   Q. Which documents did you review, if  14   any?  15                    MR. HOFFMAN: I'm going to  16   object to that.  17   Q. Did you review documents?  18   A. Some.  19   Q. Can you give me a sense of the --  20   A. I don't recall reviewing a lot of  21   documents in their entirety, but we  22   certainly reviewed a few. More than two  23   or three, less than ten.  24   Q. Which documents did you review?  25                    MR. HOFFMAN: I'm going to</p>
<p>51</p> <p>1                   B. Ullmann  2                   the form on "renewal".  3   A. I did.  4                    MR. OFFENHARTZ: If I said  5   amendment?  6                    MR. HOFFMAN: Yes, because  7   when you said renewal --  8   Q. You led that effort?  9   A. Correct.  10                   MR. HOFFMAN: Objection to  11   the form. I don't think effort was  12   the word.  13                   MR. OFFENHARTZ: Can you  14   read back the last couple of  15   questions and answers.  16                   (Whereupon the record was  17   read back by the reporter.)  18                   (Brief recess taken.)  19   Q. Mr. Ullmann, did you meet with  20   Counsel to prepare for this deposition?  21   A. I did.  22   Q. How many times?  23   A. Once.  24   Q. When?  25   A. Tuesday.</p>	<p>53</p> <p>1                   B. Ullmann  2                   object on the grounds of  3   attorney-client privilege and work  4   product, but if you can remember  5   the ones that you reviewed, you can  6   tell him.  7                    MR. OFFENHARTZ: I asked him  8   which he remembers reviewing.  9                    MR. HOFFMAN: Since I'm not  10   objecting, it's not going to be a  11   big deal.  12   A. I remember reviewing the licensing  13   agreement. We looked at -- I don't  14   remember looked at -- talked about the  15   draft amendments. We obviously  16   discussed --  17                   MR. HOFFMAN: You're not  18   supposed to go into what we  19   discussed. His question is only  20   about documents.  21   Q. Got it. That's what?  22   A. Sorry. No problem. Thank you. My  23   apologies.  24                   And the last -- I want to say a  25   couple of e-mails.</p>

<p>66</p> <p>1 B. Ullmann  2 company and he had the title of CEO.  3 Q. Do you know how the agreement got  4 to Mr. Simmons for his execution?  5 A. I don't.  6 Q. Who was involved in handling the  7 Tornado relationship within Phat Fashions?  8 A. Can you clarify the question?  9 Q. If someone asked you who, at Phat  10 Fashions, dealt with Tornado in 2006, who  11 would you include on that list?  12 A. In any capacity?  13 Q. Please tell me -- sure.  14 A. I would say contractually, it would  15 be myself on the business end; it would be  16 a number of individuals. So it can be  17 someone from licensing, it could be  18 someone working in product, it could be  19 someone in marketing.  20 Q. Thank you. That's a responsive  21 answer.  22 In terms of a dialogue, as you put  23 it, with Tornado, who would have been  24 involved in the dialogue process?  25 A. Myself.</p>	<p>68</p> <p>1 B. Ullmann  2 MR. OFFENHARTZ: Sure. Can  3 you read back the question, please.  4 (Whereupon the record was  5 read back by the reporter.)  6 A. Then the answer is correct. One of  7 those three.  8 Q. Mr. Gramke had died at some point  9 during this story; is that correct?  10 A. Yes.  11 Q. Do you recall when?  12 A. No.  13 Q. Do you recall the circumstances of  14 his death?  15 A. He committed suicide.  16 Q. He was, you mentioned, an in-house  17 lawyer at Kellwood?  18 A. Yes, of course.  19 Q. You trust and think Mr. Nathanson a  20 competent lawyer?  21 A. I trust him. I have no opinion  22 about his competency as a lawyer. I think  23 he's -- in all my dealings, he's very  24 competent and I do trust him fully.  25 Q. You rely on Mr. Nathanson's advice?</p>
<p>67</p> <p>1 B. Ullmann  2 Q. Anyone else?  3 A. No.  4 Q. Who would have handled, either your  5 outside Counsel, in-house; who else would  6 have been involved with any paperwork?  7 A. Paperwork could be Eli Nathanson  8 from Pryor Cashman. I would say at the  9 time, either Don Gramke of Kellwood legal  10 and later, Luther Rollins of Kellwood  11 legal and lastly, Peter Morris, our CFE.  12 Q. Do you recall who handled the  13 document that Mr. Wiseman executed and  14 returned to Phat Fashions?  15 MR. HOFFMAN: Objection to  16 the form.  17 A. I honestly don't know.  18 Q. Your understanding is it would have  19 been, perhaps, Mr. Morris, Mr. Gramke,  20 Mr. Rollins or Mr. Nathanson?  21 MR. HOFFMAN: Objection to  22 the form.  23 A. It would have been one of those  24 three and I would say I think it's more  25 likely -- could you restate the question.</p>	<p>69</p> <p>1 B. Ullmann  2 A. Yes.  3 Q. Do you think Mr. Rollins is a  4 competent professional?  5 A. To the best of my knowledge.  6 Q. You rely on his advice?  7 A. I do.  8 Q. You have no reason to not trust his  9 abilities?  10 A. No reason not to trust anyone's  11 abilities.  12 Q. Regarding Mr. Morris, you trust his  13 advice?  14 MR. HOFFMAN: I think you  15 may want to make that past tense.  16 Q. Can you answer the question?  17 A. Do I trust his advice? Mr. Morris  18 is not typically providing me, or did not  19 typically provide me with advice.  20 Q. Mr. Morris is no longer with the  21 company?  22 A. He's not.  23 Q. Where does he work now?  24 A. Something called Active Apparel, I  25 believe.</p>

<p>1 B. Ullmann 2 Q. What was Mr. Morris' role? 3 A. CFE. 4 Q. Do you think him a competent CFE? 5 A. I liked him a lot. 6 Q. Did you think of him a competent 7 CFE? 8 A. I think he worked hard and did the 9 best that he could. 10 Q. Did you think him competent? 11 MR. HOFFMAN: I think that 12 question has been asked and 13 answered. 14 MR. OFFENHARTZ: It's clear 15 from the witness' facial expression 16 he wants to answer it and he can't 17 quite bring himself to answer it. 18 MR. HOFFMAN: I object to 19 the characterization -- 20 MR. OFFENHARTZ: I'm sure 21 you could -- 22 MR. HOFFMAN: You're 23 constantly interrupting me and it's 24 very rude. 25 MR. OFFENHARTZ: There is a</p>	<p>70 1 B. Ullmann 2 me that in answering these questions, you 3 have been making a facial expression that 4 would lend one to think that you are 5 trying very hard to, perhaps with the best 6 of intentions, avoid saying that you don't 7 think Mr. Morris was competent? 8 A. If the question is very well-put 9 and it's a little unfair to say that. 10 Mr. Morris is, to a large extent, 11 competent. He was not really involved in 12 the business dealings and that's the 13 accurate -- so he's a good guy, he's an 14 overall competent guy; he wasn't really 15 involved in the transactions of the 16 business negotiations. He wasn't really 17 involved in them. 18 So I didn't take his advice. He 19 wasn't involved. His function was 20 mechanical in the negotiations. He moved 21 the paper around. 22 Q. Mr. Nathanson, Gramke and Rollins, 23 those people you counted on and you relied 24 on? 25 A. Yes.</p>
<p>1 B. Ullmann 2 question pending. 3 MR. HOFFMAN: No, there is 4 not a question pending. There is 5 an objection pending. I'm asking 6 you, Adam, as a courtesy to let me 7 get a whole sentence out. The 8 sentence is -- maybe it's more than 9 one sentence. 10 You're characterizing his 11 facial expressions. I'm not 12 agreeing with you about what his 13 facial expressions state. When you 14 say that it's clear to you what 15 he's thinking, then we really don't 16 have to do a deposition because we 17 can just let the reporter write 18 down what these thoughts are. 19 MR. OFFENHARTZ: If you'll 20 stipulate to that, I'll be happy to 21 do that. 22 MR. HOFFMAN: Whatever he's 23 thinking, he's thinking. Please 24 don't put words into his mouth. 25 Q. Mr. Ullmann, would you agree with</p>	<p>71 1 B. Ullmann 2 Q. Mr. Ullmann, when did you and Issie 3 Wiseman first discuss the possibility of 4 amending the licensing agreement to extend 5 it? 6 A. I cannot recall the first time; it 7 was sometime in the spring of '06 -- oh, 8 boy. Wait. Let me take that back. 9 It may have been as early as 10 towards the end of '05. I believe it came 11 up the first time at MAGIC -- at the MAGIC 12 show in February of '06. But I'm not 13 certain. This is what I think could have 14 happened. 15 Q. Can you tell me what you recall of 16 that first discussion? 17 A. Very casual, very fleeting. Just 18 Issie saying something along the lines of, 19 Hey, I'd like to renew our agreement and 20 me, just as easily and casually, saying, 21 Sure, why not. And then I believe we had 22 a brief conversation about it at the MAGIC 23 show. So I think maybe there was one 24 phone conversation prior and then a very 25 casual conversation at the show.</p>

1 B. Ullmann  
 2 Q. Do you recall if Mr. Wiseman called  
 3 you or you called Mr. Wiseman, the  
 4 pre-MAGIC show conversation?  
 5 A. I don't recall.  
 6 Q. Can you tell me what you recall of  
 7 the discussions at the MAGIC show?  
 8 A. I don't recall a lot; the shows are  
 9 very, very hectic. There is never any  
 10 time to sit down and have formal  
 11 conversations. I do recall having said  
 12 something about him needing to increase  
 13 minimums, but I can't recall if it's a  
 14 free memory from the actual conversation  
 15 or something that has been brought up  
 16 later.  
 17 Q. When you say "later," you mean  
 18 perhaps in preparation for this deposition  
 19 or the litigation?  
 20 A. Prior to that, but I don't remember  
 21 when.  
 22 Q. Why did you want to raise the  
 23 minimums?  
 24 A. Well, I didn't. I was perfectly  
 25 happy minding my own business when Issie

1 B. Ullmann  
 2 A. In Las Vegas. Well, actually, when  
 3 is Valentine's Day?  
 4 MR. HOFFMAN: The 14th.  
 5 A. Typically, I end up running afoul  
 6 around Valentine's Day, so that should  
 7 help us.  
 8 Q. You think it was probably around  
 9 Valentine's Day?  
 10 A. As I said, I am typically running  
 11 afoul on Valentine's Day.  
 12 MR. OFFENHARTZ: Can you  
 13 mark this as Defendant's Exhibit 1,  
 14 please.  
 15 (Whereupon Two-page exhibit  
 16 bearing Bates stamp TOR899 and  
 17 TOR900 was marked Defendant's  
 18 Exhibit 1 for identification as of  
 19 this date.)  
 20 Q. Mr. Ullmann, I'm going to hand you  
 21 a document that's been marked as  
 22 Defendant's Exhibit 1. Could you take a  
 23 moment, please, and review this?  
 24 A. Yes. Okay.  
 25 MR. OFFENHARTZ: First of

1 B. Ullmann  
 2 brought up renewal. It was not on my mind  
 3 at all. As a knee-jerk reaction, I  
 4 said -- whatever I said; I don't know what  
 5 I said.  
 6 But it was something along the  
 7 lines of, If we are to even consider it,  
 8 you're going to need to bring up your  
 9 minimums.  
 10 Q. What was the next contact you had  
 11 with Issie following the MAGIC show?  
 12 A. I don't recall.  
 13 Q. You may have already spoken of  
 14 this: The MAGIC show occurred when in  
 15 2006?  
 16 A. February of 2006.  
 17 Q. Do you recall in the early part of  
 18 the month, the latter part of the month?  
 19 A. I want to say it's the latter part  
 20 of the month, but again --  
 21 MR. HOFFMAN: Before or  
 22 after President's Day?  
 23 THE WITNESS: I honestly  
 24 don't remember.  
 25 Q. Where was the MAGIC show held?

1 B. Ullmann  
 2 all, for the record, this is a  
 3 two-page exhibit bearing Bates  
 4 stamp TOR899 and TOR900.  
 5 Q. Mr. Ullmann, can you identify this  
 6 exhibit, please?  
 7 A. It's an e-mail from Issie to Barry.  
 8 And then further down, I guess these are  
 9 two e-mails, I guess because further down  
 10 it says from Issie to Bernt.  
 11 So it's an e-mail to me and  
 12 attached to the e-mail appears to be some  
 13 proposed minimums for the amended  
 14 agreement.  
 15 Q. Do you recall receiving the e-mail  
 16 from Mr. Wiseman on or about March 1,  
 17 2006?  
 18 A. Honestly, I don't recall. I don't  
 19 recall.  
 20 Q. Do you recall, at some point in  
 21 March 2006, looking at these minimums and  
 22 having a reaction to these minimums?  
 23 A. I don't.  
 24 Q. Would you have discussed these  
 25 minimums with anyone at Phat Fashions?

<p>1 B. Ullmann 2 A. No. 3 Q. You were the decision maker on 4 minimums? 5 A. No, the way it would work is that I 6 would handle the dialogue. Once we had 7 reached a meeting of the minds, I would 8 then have to turn around and take, in this 9 case, the document, the numbers, whatever 10 it was and I make a presentation to Bob 11 Skinner and he was the final decision 12 maker. 13 Q. Do you recall a discussion with 14 Mr. Wiseman following receipt of what's 15 been marked as Exhibit No. 1? 16 A. I don't recall in this specific 17 conversation. If you can frame the 18 question differently, maybe. 19 Q. Do you recall generally having 20 discussions with Mr. Wiseman or anyone 21 else from Tornado about an amendment? 22 A. I don't recall having conversations 23 with anyone but Issie. I do recall having 24 some conversations with Issie; I don't 25 specifically recall the line of detail.</p>	<p>78 1 B. Ullmann 2 have to do with this, but has to do with 3 our Baby Phat licensee terminating the 4 contract with a designated company that 5 Issie is affiliated with or an owner of or 6 part-owner of and thus causing them to 7 lose Baby Phat for Canada and he was 8 distraught. I do recall that. But I 9 don't recall exactly when that was. 10 I understand your line of 11 questioning was what do I recall about 12 this process and I apologize. I don't 13 recall in great detail. 14 MR. HOFFMAN: Off the 15 record. 16 (Whereupon a discussion was 17 held off the record.) 18 Q. Just so we're clear, you don't 19 recall any detail whatsoever about any 20 conversations between March of 2006 and a 21 conversation you had in fall of '06 22 regarding a Baby Phat licensee dispute 23 involving Issie? 24 I'm simply trying to get a 25 chronology, if you will.</p>
<p>79 1 B. Ullmann 2 Q. Why don't you tell me about the 3 next conversation that you do recall and 4 tell me as much about that conversation as 5 you are able. 6 MR. HOFFMAN: I just object 7 to the form on "next" because he 8 may not remember that it's the next 9 conversation. You've asked him 10 about conversations he remembers. 11 If he could put it in a context, 12 fine. 13 A. If you can ask specific questions, 14 it would be helpful. I have no specific 15 recollection that I can sit here and 16 testify to. 17 Q. From March of 2006 on, what is the 18 next conversation that you can recall any 19 substance of with Mr. Wiseman? 20 MR. HOFFMAN: Objection to 21 the form. You can answer. 22 A. The next conversation that I can 23 recall in any great detail -- in detail, 24 is a conversation that takes place much 25 later in the fall and that -- it does not</p>	<p>81 1 B. Ullmann 2 MR. HOFFMAN: I object to 3 the form. You can answer if you 4 understand it. 5 A. I do recall having some 6 conversations, but I can't materially 7 recall any type of detail. I really 8 cannot. 9 Q. Can you generally recall any 10 detail? 11 A. No. 12 Q. Did you discuss baseball? 13 A. Probably not. 14 Q. Did you discuss the amendment? 15 A. I would say it's likely. 16 Q. What did you discuss about the 17 amendment? 18 MR. HOFFMAN: Objection to 19 the form on "amendment." It is 20 what it is. 21 A. I truly cannot recall specific 22 details. If you ask specific questions, 23 I'm happy to try, to the best of my 24 ability, to answer. 25 Q. Can you recall general details?</p>

<p>82</p> <p>1 B. Ullmann  2 A. No, I don't.  3 Q. You have no recollection of  4 discussing the amendment with Mr. Wiseman?  5 MR. HOFFMAN: Objection to  6 form. He said without being  7 refreshed. If you want to show him  8 documents or ask him questions, he  9 might be able to do so.  10 A. Right --  11 MR. OFFENHARTZ: You're  12 answering for the witness and now  13 he's going to repeat your answer.  14 MR. HOFFMAN: I'm actually  15 repeating his answer that he has  16 given now on two occasions.  17 Q. Mr. Ullmann, would you please  18 answer my question.  19 A. Can you repeat the question.  20 MR. OFFENHARTZ: Read my  21 question back, please.  22 (Whereupon the record was  23 read back by the reporter.)  24 A. I have no specific recollection.  25 But it speaks to, at the time -- just to</p>	<p>84</p> <p>1 B. Ullmann  2 Q. Do you recall when that was?  3 A. It was either the end of '06 or the  4 beginning of '07. Somewhere -- I want to  5 say somewhere between December of '06 and  6 mid-February of '07. Prior, I think, to  7 the MAGIC show of '07.  8 Q. Do you recall other discussions  9 with Mr. Wiseman regarding the potential  10 amendment, in your perspective?  11 A. Can you read the question or ask it  12 again?  13 Q. I'll re-ask it. I'm trying to kind  14 of fill in the boxes on the chronology.  15 A. I understand.  16 Q. You mentioned a conversation end of  17 '06, beginning of '07 with Mr. Wiseman  18 regarding a license for Coogi.  19 I'm asking you if you recall other  20 conversations with Mr. Wiseman, of any  21 nature, from the fall of '06 forward?  22 A. Yes, that I do. I do recall  23 additional conversation about the Baby  24 Phat situation. I wasn't particularly  25 close to it, but he asked for my</p>
<p>83</p> <p>1 B. Ullmann  2 clarify, it was still just a dialogue. I  3 wasn't in a serious negotiation at the  4 time, which is why I didn't emerge myself  5 in it.  6 Q. You keep saying "no specific  7 recollection"; I'm just asking what your  8 general recollection is.  9 A. Okay, I have no --  10 Q. If you have no general  11 recollection, then I won't keep asking.  12 Do you see the distinction I'm drawing?  13 A. Yes, I do I see it. I'm sorry  14 then, I think I need to say I have no  15 general recollection. I remember talking  16 to him.  17 Q. Mr. Ullmann, do you recall any  18 conversations with Mr. Wiseman after the  19 conversation you had in the fall of '06  20 about the Baby Phat licensee dispute?  21 A. I recall helping him getting a new  22 license with a different company. I  23 helped him obtain a license for a company  24 called Coogi. It is my understanding he  25 operates that license today.</p>	<p>85</p> <p>1 B. Ullmann  2 assistance and I believe that in the end,  3 that dispute was settled with some  4 financial settlement.  5 I also recall, at one point,  6 advising him that we would not be going  7 forward and when his license expired,  8 there would be no amendments going forward  9 and I remember a couple of conversations  10 where Issie first was trying to argue and  11 then plead and, ultimately, there were  12 conversations where he recognized it -- he  13 shared with me his views of the potential  14 new licensee, some negative views; he  15 shared with me that there was some history  16 between Mr. Wiseman and Mr. Gaby Bitton.  17 I was obviously unaware of all of  18 that. And there were some conversations  19 where he said, Hey, you know, if there's  20 something you can throw me, maybe I can  21 continue to do the shoes and do a good job  22 with the shoes. I don't think Gaby is big  23 in shoes; something like that. So those  24 type of conversations.  25 Q. I'm now going to ask you a few</p>

<p>1 B. Ullmann 2 questions just to try to put these 3 recollections you have in some sort of 4 time frame. 5 When did you inform Mr. Wiseman 6 that you would not be going forward with 7 an amendment? 8 A. I don't recall exactly, but I know 9 it was prior to MAGIC in February of '07. 10 Q. Do you recall how long that 11 conversation was? 12 A. No. 13 Q. I'm assuming, from your description 14 of the other conversations, they would 15 have occurred after you informed that you 16 weren't going forward? 17 A. Yes. 18 Q. Roughly how many of the 19 conversations would you say there were of 20 that nature? 21 MR. HOFFMAN: Which nature? 22 MR. OFFENHARTZ: Of the ones 23 he described -- fair point. Let me 24 ask that again. 25 Q. How many conversations have you had</p>	<p>86 1 B. Ullmann 2 have any discussions with Mr. Wiseman from 3 March of '06 through to December of '06, 4 other than the one you described dealing 5 with the Baby Phat licensee issue? 6 A. Yes, I believe so. 7 Q. How many would you say you had? 8 A. At least a few. 9 Q. A few being three to five, four to 10 six, five to seven? 11 A. Two to four; something like that. 12 Q. Those two to four conversations are 13 the ones you have no general recollection 14 of? 15 A. Correct. 16 (Brief recess taken.) 17 Q. Mr. Ullmann, do you recall 18 Mr. Wiseman reaching out to you at any 19 time from March of 2006 through February 20 of 2007 and asking you where things were 21 regarding the amendment to the license 22 agreement? 23 A. I don't recall the exact wording. 24 I do recall having conversations. I mean, 25 I do recall him reaching out to me and</p>
<p>87 1 B. Ullmann 2 with Mr. Wiseman after you informed him 3 there would be no amendment or that you 4 were not going to go forward with the 5 amendment that you fully executed? 6 MR. HOFFMAN: Objection to 7 the form. 8 A. Numerous, without being able to say 9 exactly how many. 10 Q. Again, numerous? 11 A. More than three or four, but 12 probably less than ten. 13 Q. I understand that you don't 14 recall -- you have no general recollection 15 of any conversations with Mr. Wiseman from 16 March of '06 through the fall when you 17 discussed with him the Baby Phat licensee 18 dispute. -- 19 Do you recall how many 20 conversations you had with him, if any? 21 MR. HOFFMAN: Objection to 22 the form on the prologue to that 23 question. 24 A. Can you please restate? 25 Q. Let me ask it another way: Did you</p>	<p>89 1 B. Ullmann 2 inquiring, in general, the status maybe. 3 Q. How many of those conversations do 4 you recall taking place? 5 A. I don't recall an exact number. 6 I'm thinking it's a few conversations. 7 Q. Three to five, two to four? 8 A. Two, three. 9 Q. Do you recall when these 10 conversations were? 11 A. No. 12 Q. Do you recall, generally, what was 13 discussed? 14 A. I do recall speaking to 15 Mr. Wiseman; I don't recall specifically 16 or generally. 17 Q. I'm teaching you how to be a 18 witness. This is very frustrating for me. 19 I'm sorry. 20 A. That's okay. 21 Q. You do recall, in a time period 22 from March of 2006 through February of 23 2007, that Mr. Wiseman and you spoke about 24 the status of the amendment? 25 A. I remember speaking to him.</p>

<p>90</p> <p>1 B. Ullmann</p> <p>2 Q. The answer is yes?</p> <p>3 A. I do remember speaking to him.</p> <p>4 Q. About the status of the amendment?</p> <p>5 A. I do remember speaking to him. I</p> <p>6 do not recall what was discussed.</p> <p>7 Q. Do you recall discussing the status</p> <p>8 of the amendment, generally, specifically</p> <p>9 or otherwise?</p> <p>10 A. I don't recall it.</p> <p>11 Q. Do you recall any discussions where</p> <p>12 Mr. Wiseman said words to the effect of,</p> <p>13 "Bernt, when are you sending me the signed</p> <p>14 amendment"?</p> <p>15 A. I don't recall having a</p> <p>16 conversation along those lines.</p> <p>17 MR. OFFENHARTZ: Can you</p> <p>18 mark this as Defendant's Exhibit 2,</p> <p>19 please.</p> <p>20 (Whereupon Three-page</p> <p>21 exhibit, bearing the Bates numbers</p> <p>22 PF0130 through 0132 was marked</p> <p>23 Defendant's Exhibit 2 for</p> <p>24 identification as of this date.)</p> <p>25 Q. Mr. Ullmann, would you please take</p>	<p>92</p> <p>1 B. Ullmann</p> <p>2 this to Don Gramke with a cc to Peter</p> <p>3 Morris?</p> <p>4 A. I don't, but I'm going to have to</p> <p>5 think that I did.</p> <p>6 Q. I misspoke; it's forwarded to Don</p> <p>7 Gramke and Eli Nathanson. You'll see on</p> <p>8 the bottom of 0130.</p> <p>9 MR. HOFFMAN: Peter Morris,</p> <p>10 you said?</p> <p>11 MR. OFFENHARTZ: Cc'd to</p> <p>12 Peter Morris.</p> <p>13 A. Yes.</p> <p>14 Q. Why would you have forwarded this</p> <p>15 on to Don Gramke, Eli Nathanson with a cc</p> <p>16 to Peter Morris?</p> <p>17 A. Pretty standard operating procedure</p> <p>18 in the process of any type of negotiation</p> <p>19 or discussion. I don't want to be an</p> <p>20 island all to myself; I always want legal</p> <p>21 to be apprised of what is going on, as</p> <p>22 kind of like a cc, so I know that someone</p> <p>23 else is looking at it as well.</p> <p>24 Q. You received a question from</p> <p>25 Mr. Gramke; isn't that true?</p>
<p>91</p> <p>1 B. Ullmann</p> <p>2 a moment to review this document.</p> <p>3 A. Thank you.</p> <p>4 MR. OFFENHARTZ: I'll</p> <p>5 identify it somewhat for the</p> <p>6 record.</p> <p>7 It's a three-page exhibit,</p> <p>8 bearing the Bates numbers PF0130</p> <p>9 through 0132.</p> <p>10 Q. Have you had a chance to review it?</p> <p>11 A. I have.</p> <p>12 Q. Can you identify this document,</p> <p>13 please.</p> <p>14 A. It's a string of e-mails attached</p> <p>15 to the proposal that Issie Wiseman had</p> <p>16 forwarded in regards to the draft</p> <p>17 amendment of the agreement. And the</p> <p>18 proposal that was previously discussed,</p> <p>19 that is also attached.</p> <p>20 MR. HOFFMAN: Meaning DX1?</p> <p>21 THE WITNESS: Correct.</p> <p>22 Q. You mentioned that Cathy McGuiness</p> <p>23 was your secretary?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall asking her to forward</p>	<p>93</p> <p>1 B. Ullmann</p> <p>2 A. I can see that I did.</p> <p>3 Q. You answered his question?</p> <p>4 A. Correct.</p> <p>5 Q. Do you recall any discussions you</p> <p>6 had with Mr. Gramke about the status of</p> <p>7 the discussions with Tornado around this</p> <p>8 time?</p> <p>9 A. I do not.</p> <p>10 Q. I know I asked you this before, but</p> <p>11 I do not recall the answer. Do you recall</p> <p>12 when Mr. Gramke passed away?</p> <p>13 A. I do not. I'm sorry. —</p> <p>14 Q. Do you recall any discussions with</p> <p>15 Mr. Nathanson regarding this process at</p> <p>16 this time?</p> <p>17 MR. HOFFMAN: Object to the</p> <p>18 form, but you can answer that.</p> <p>19 It's a little vague.</p> <p>20 A. Again, if there is a specific</p> <p>21 question, I'm very happy to try to answer</p> <p>22 it. I cannot recall, in general, any</p> <p>23 conversation regarding --</p> <p>24 Q. Can you recall anything specific?</p> <p>25 A. Can you ask a specific question --</p>

<p>1 B. Ullmann 2 no, I can't. I'm sorry. I wish I could. 3 Many years ago, I would, but no, I don't. 4 Q. Was there anyone on your team who 5 you were seeking input from on whether the 6 numbers provided by Mr. Wiseman made sense 7 or worked from Phat Fashions' perspective? 8 A. I don't think so. I could expand 9 upon the last question. 10 Q. Please. 11 A. And just as a clarification at this 12 stage, I don't believe it would be 13 anyone's Counsel I would be seeking at one 14 point. I would be presenting the numbers 15 to Bob Skinner and he was the ultimate 16 decision maker as to whether any deal made 17 sense to us. 18 Q. Mr. Ullmann, the document that 19 Mr. Wiseman prepared and sent to you, that 20 is in Defendant's Exhibit 1, it's -- I 21 don't know what you call it -- two 22 paragraphs -- it's a short little letter 23 format; is that correct? 24 A. Yes, sir. 25 Q. This is the one you had your</p>	<p>94 1 B. Ullmann 2 document? 3 A. I can't, to say that we briefly 4 glanced at this document during the review 5 in preparation for today's deposition. 6 Q. On Tuesday? 7 A. On Tuesday, correct. 8 Q. Can you identify the three-page -- 9 I'm sorry, the four-page document, bearing 10 the Bates numbers PF0141 through 0144? 11 A. Yes. It's the draft amendment to 12 the licensing agreement with Tornado. 13 There is a cover letter from Eli 14 Nathanson -- 15 Q. We'll get to that, don't worry. I 16 know you're -- 17 MR. OFFENHARTZ: Off the 18 record. 19 (Whereupon a discussion was 20 held off the record.) 21 Q. Who prepared the four-page document 22 that is attached to the cover e-mail? 23 A. I don't know, but my expectation is 24 that it's Eli Nathanson. 25 Q. Who directed Mr. Nathanson to</p>
<p>95 1 B. Ullmann 2 assistant forward on to some of your 3 colleagues? 4 A. Yes. 5 Q. Again, it's a two, three-paragraph 6 letter. 7 MR. OFFENHARTZ: Can you 8 mark this as Defendant's Exhibit 3, 9 please. 10 (Whereupon Four-page 11 document, bearing the Bates numbers 12 PF0141 through 0144 was marked 13 Defendant's Exhibit 3 for 14 identification as of this date.) 15 A. Thank you very much. 16 Q. Would you please take a moment and 17 review what's been marked as Defendant's 18 Exhibit 3? -- 19 A. Yes. 20 Q. Have you had a chance to review the 21 document? 22 A. I have. 23 Q. Have you seen this document before? 24 A. I have. 25 Q. When did you last see this</p>	<p>95 1 B. Ullmann 2 prepare this document? 3 A. I did. 4 Q. Can you tell us, please, why you 5 asked Mr. Nathanson to prepare this 6 document? 7 A. It was in an attempt to continue to 8 advance the dialogue with Issie. I would 9 say fairly standard operating procedure. 10 And I might add, we have a number of draft 11 agreements that never get executed into a 12 final agreement. 13 Q. In fact, you would draw a sharp 14 distinction between agreements that are in 15 execution phase versus agreements that are 16 still awaiting comments; is that correct? 17 MR. HOFFMAN: Objection to 18 the form. 19 A. No, that's not the distinction. I 20 would draw a distinction between drafts 21 where we are having either dialogue or not 22 a final decision as to whether or not we 23 intend to excuse any documents that are 24 actually executed. 25 Q. I'm sorry, you're putting three</p>

<p style="text-align: right;">98</p> <p>1                   B. Ullmann  2 categories, if I understand correctly?  3 A. No.  4 Q. Let me lay them out; you can tell  5 me if I understand correctly or not -- you  6 know, I'll come back to that.  7 A. I'm happy to clarify it.  8                   MR. HOFFMAN: Let him come  9 back to it.  10 Q. I'll come back to it.  11                   MR. HOFFMAN: It's not like  12 he's going to forget.  13                   THE WITNESS: But it's not  14 like it's going to change.  15 Q. Would you look at the second page  16 of the amendment, which is the third page  17 of the exhibit?  18 A. Yes.  19 Q. Would you compare the numbers on  20 that page, which is PFO142, with the  21 numbers on the second page of what's been  22 marked as Exhibit 1?  23 A. Yes. They appear to be identical,  24 other than in this document, there is a  25 minimum net sales provision that seems to</p>	<p style="text-align: right;">100</p> <p>1                   B. Ullmann  2 A. No direction. All -- again, all  3 agreements state minimum net sales and  4 minimum royalties. So it's automatic.  5 Q. Do you recall upon whose direction  6 Mr. Nathanson added in all of the other  7 paragraphs and elements of this four-page  8 document that were not present in  9 Mr. Wiseman's half-page document?  10 A. Each and every paragraph are  11 standard paragraphs, except there is one,  12 and I don't know where it is, but I know  13 for a fact that since I was still in the  14 early stages of this process, I reserved  15 all rights to amend the amendment.  16 Q. That's in this four-page amendment?  17 A. I am thinking that it may not be in  18 the amendment, but I am thinking that -- I  19 thought I just saw it. Yes, here I saw  20 it. So it is not in the amendment; it's  21 in the cover letter, actually.  22 Q. Mr. Ullmann, you asked  23 Mr. Nathanson to take Mr. Wiseman's form  24 in Defendant's 1 and turn it into this  25 four-page document, correct?</p>
<p style="text-align: right;">99</p> <p>1                   B. Ullmann  2 be missing from the proposal that was  3 received from Tornado.  4                   MR. HOFFMAN: When you say  5 "this document," you're referring  6 to the attachment to DX3?  7 A. Did I answer it correctly?  8 Q. Yes. Mr. Ullmann, which document,  9 Exhibit 1 or Exhibit 3, has the minimum  10 net sales?  11 A. Exhibit 3 has the minimum net  12 sales.  13 Q. Mr. Ullmann, Issie Wiseman did not  14 include minimum net sales figures in his  15 version of this writing that he sent you  16 on March 1st; did he?  17 A. It appears that he didn't.  18 Q. I'm sorry, I couldn't hear you.  19 A. It appears that he did not.  20 Q. Mr. Nathanson included minimum net  21 sales in his version; is that correct?  22 A. That's correct.  23 Q. Do you recall upon whose direction  24 Mr. Nathanson was relying for including  25 the minimum net sales?</p>	<p style="text-align: right;">101</p> <p>1                   B. Ullmann  2 A. Yes.  3                   MR. HOFFMAN: Objection to  4 the form.  5 A. It is correct.  6 Q. Do you recall what Mr. Nathanson  7 asked you that should be included in the  8 four-page document?  9 A. I don't have a recollection of what  10 specifically he may have asked. I assume  11 he must have had some questions, but I  12 don't recall. It would be normal that he  13 had some questions.  14 Q. Do you recall any discussions with  15 Mr. Wiseman in the days following Monday,  16 March 20th when Eli Nathanson sent him  17 this amendment?  18 A. Can you repeat that.  19                   MR. OFFENHARTZ: Can you  20 read the question back, please.  21                   (Whereupon the record was  22 read back by the reporter.)  23                   MR. HOFFMAN: Do we know  24 that March 20th was a Monday?  25                   MR. OFFENHARTZ: Did I say</p>

1 B. Ullmann  
2 Monday?  
3 MR. HOFFMAN: Yes.  
4 MR. OFFENHARTZ: Actually,  
5 it does indeed say Monday, March  
6 20th.  
7 Q. Let me ask it again: Does this  
8 refresh your recollection that you had any  
9 discussions with Mr. Wiseman in March or  
10 April regarding the amendment of the  
11 license agreement?  
12 A. I recall having conversations with  
13 Issie, but I do not recall what we  
14 discussed.  
15 MR. OFFENHARTZ: Can you  
16 mark this as Defendant's Exhibit 4,  
17 please.  
18 (Whereupon Six-page  
19 document, bearing the Bates numbers  
20 PF0147 through 0152 was marked  
21 Defendant's Exhibit 4 for  
22 identification as of this date.)  
23 Q. Mr. Ullmann, I've handed you a  
24 six-page document; bearing the Bates  
25 numbers PF0147 through 0152.

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1 B. Ullmann  
2 Q. Do you recall having a discussion  
3 with Mr. Nathanson at the end of March,  
4 March 29th or March 30th, regarding a  
5 discussion that Barry Segal had with  
6 Mr. Nathanson?  
7 A. No, I don't recall it.  
8 Q. It's true, isn't it, that Mr. Segal  
9 of Tornado says in his letter, "Dear  
10 Mr. Nathanson: It was a pleasure speaking  
11 with you yesterday"?  
12 A. It does say that.  
13 Q. Do you have any knowledge of that  
14 conversation that took place between  
15 Mr. Segal and Mr. Nathanson?  
16 A. I cannot recall that there was such  
17 a conversation. I see it; it must have  
18 taken place. I don't recall.  
19 Q. Do you recall Mr. Nathanson calling  
20 you up and saying, Hey, I just spoke to  
21 Barry Segal of Tornado, he said "X"?  
22 A. No, I don't recall.  
23 Q. You indicated that you rely on  
24 Mr. Nathanson, correct?  
25 MR. HOFFMAN: Objection to

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1 B. Ullmann  
2 Will you take a moment to review  
3 it, please?  
4 A. Sure.  
5 Q. Have you had a chance to look at  
6 it?  
7 A. Yes.  
8 Q. Can you identify this document,  
9 please.  
10 A. It's a copy of what appears to be  
11 the draft amendments with the signature by  
12 Issie Wiseman. There is a brief cover  
13 letter on top to Mr. Nathanson and there  
14 is a FedEx slip at the back, I guess,  
15 documenting that something -- presumably  
16 this document -- was delivered to Pryor  
17 Cashman.  
18 Q. Would you turn to PF0149, please?  
19 A. Yes.  
20 Q. Would you look at page PF0142 of  
21 Exhibit 3?  
22 A. Yes.  
23 Q. The numbers do match up, don't  
24 they?  
25 A. They do.

103

1 B. Ullmann  
2 the form.  
3 A. He is outside Counsel.  
4 Q. You rely on him?  
5 MR. HOFFMAN: Objection to  
6 the form. For what?  
7 Q. Can you answer the question? If  
8 you can't answer the question, tell me you  
9 can't answer it; that's okay.  
10 A. I do rely upon -- it's a very  
11 open-ended question. I do rely upon him  
12 in legal matters, yes.  
13 Q. You were relying on him regarding  
14 the discussions with Tornado to prepare  
15 documents?  
16 A. Exactly, to prepare documents, yes.  
17 Q. At your instructions, Mr. Nathanson  
18 prepared the document that was sent to  
19 Issie Wiseman and Barry Segal, correct?  
20 A. Correct.  
21 Q. Mr. Nathanson had a discussion with  
22 Mr. Segal and a day later, Mr. Segal  
23 returned an executed copy of that  
24 amendment?  
25 MR. HOFFMAN: I object to

105

1 B. Ullmann  
2 Q. As well as Mr. Nathanson?  
3 A. Or instead of Mr. Nathanson.  
4 Q. Another person cc'd on this is Don  
5 Gramke?  
6 A. Yes.  
7 Q. Just to clarify the record, prior  
8 to his death, Mr. Gramke was an in-house  
9 lawyer at Kellwood, correct?  
10 A. That is correct.  
11 Q. You thought Mr. Gramke was a  
12 capable lawyer?  
13 MR. HOFFMAN: Asked and  
14 answered.  
15 A. Yes.  
16 Q. Turning back to Defendant's Exhibit  
17 No. 4. In March of 2006, who would have  
18 been giving Mr. Nathanson instructions on  
19 how to deal with Tornado?  
20 A. That question is too open. If you  
21 mean business-wise, I would. I do not  
22 know if Mr. Nathanson was getting legal  
23 direction from within the firm.  
24 Q. Who would have been giving  
25 Mr. Nathanson instruction on the status of

110

1 B. Ullmann  
2 MR. HOFFMAN: Objection to  
3 the form. He just answered that  
4 question.  
5 MR. OFFENHARTZ: No, that is  
6 a signature block. I'm asking  
7 other than a signature block?  
8 MR. HOFFMAN: Now you're  
9 asking other than a signature  
10 block.  
11 Q. Mr. Ullmann, other than a signature  
12 block, can you identify where, in this  
13 agreement, it requires two signatures for  
14 Phat Fashions?  
15 A. This document stipulates the  
16 business terms and I do not think that it  
17 would need to address -- that's one of our  
18 requirements; one of Phat Fashions'  
19 requirements were two signatures.  
20 Q. What are your bases for saying Phat  
21 Fashions had a requirement for two  
22 signatures?  
23 A. Question not understood.  
24 Q. How did you come to know that -- is  
25 there anything in Phat Fashions' bylaws

112

1 B. Ullmann  
2 your discussions with Mr. Wiseman  
3 regarding the amendment?  
4 A. I would.  
5 Q. Who would have been giving  
6 Mr. Nathanson instructions on who needs to  
7 sign an amendment or review an amendment  
8 within your company?  
9 A. No instruction needed. Standard  
10 operating procedure would be that every  
11 single agreement, amendment, renewal  
12 required two signatures at the time; the  
13 signatures of Bob Skinner and Russell  
14 Simmons.  
15 Q. Mr. Ullmann, can you please tell me  
16 where, in this four-page document, PF0148  
17 through 0151, it indicates that two  
18 signatures are required?  
19 A. Well, I would say if one goes to  
20 PF0151 and you look under Phat Fashions,  
21 LLC, there are clearly two signature lines  
22 and only one for Tornado.  
23 Q. Is there any writing or a part of  
24 this agreement that indicates there must  
25 be two signatures for Phat Fashions?

111

1 B. Ullmann  
2 that requires two signatures for an  
3 amendment to a license agreement?  
4 A. I have not seen our bylaws, so I  
5 wouldn't know. I will know or I do know  
6 that Phat Fashions is a Kellwood company  
7 and it's a requirement that is in every  
8 legal document, is signed both by or at  
9 this time as the -- Russell Simmons as the  
10 CEO of Phat Fashions or Bob Skinner in his  
11 capacity as our highest officer and, of  
12 course, now also chairman of a Kellwood  
13 company.  
14 Q. Can you identify the writing that  
15 requires two signatures?  
16 A. Oh, I think I can; the signature,  
17 please.  
18 Q. Can you identify the Kellwood  
19 procedure manual that requires two  
20 signatures?  
21 A. No.  
22 Q. Have you ever seen a Kellwood  
23 document that mandates that Phat Fashions  
24 must have two signatures on an amendment?  
25 A. I know it as a fact that we require

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<p style="text-align: right;">114</p> <p>1                   B. Ullmann  2 two signatures.  3 Q. Mr. Ullmann, my question was  4 directed to: Can you identify a writing  5 of Kellwood, a procedures manual, a  6 contract governance manual, a rules for  7 contracting a Kellwood memorandum, that  8 would state that there must be two  9 signatures?  10 A. It's entirely possible that this  11 exists. I haven't seen it, but relied  12 upon the words of my colleagues.  13 Q. Which colleagues told you that this  14 was required?  15 A. That would be Bob Skinner, my boss,  16 and most senior executive of Kellwood.  17 Q. In this four-page document, PF0148  18 through PF0151, can you point out to me  19 who the parties to this amendment are?  20                   MR. HOFFMAN: The object  21 speaks for itself, but he can  22 answer.  23 A. Yes. The parties are Phat  24 Fashions, LLC and Tornado Imports.  25 Q. Would you turn to the signature</p>	<p style="text-align: right;">116</p> <p>1                   B. Ullmann  2 Q. Then please tell me who the parties  3 are?  4 A. Bob Skinner, Russell Simmons.  5 Q. They are parties to this agreement?  6 A. Let's back up. Several questions  7 ago, you asked who were the parties; I  8 believe it was answered, it's answered by  9 the document. I thought we were focusing  10 on the signature block.  11 Q. I'm asking you: In the signature  12 block --  13 A. If you asked me if it is clear to  14 me, and it is clear to me, that the  15 signatures on behalf of Phat Fashions is  16 Bob Skinner and Russell Simmons.  17                   MR. OFFENHARTZ: Move to  18 strike as not responsive.  19 Q. Mr. Ullmann, as this case  20 progresses, you'll have many opportunities  21 to answer questions directly from your  22 Counsel, but the way a deposition works is  23 you should answer the questions I ask.  24 A. I apologize. I misunderstood.  25 MR. HOFFMAN: I think that</p>
<p style="text-align: right;">115</p> <p>1                   B. Ullmann  2 block on PF0151. The signature block; can  3 you please tell me who the parties are per  4 this signature block?  5 A. Phat Fashions, LLC and then two  6 legally-binding signatures.  7 Q. The two parties to this agreement  8 per the signature block are?  9                   Mr. Ullmann, you do just have to  10 answer the question.  11 A. Per the signature block, it's not  12 clear.  13                   MR. HOFFMAN: Can I help?  14                   MR. OFFENHARTZ: No.  15 Q. Mr. Ullmann, as you read the  16 signature block and I really do want this  17 to be clear, there is -- one last  18 question. --  19                   Mr. Ullmann, as you read this  20 document, it is not clear to you who the  21 parties are?  22                   MR. HOFFMAN: Objection to  23 the form.  24 A. It's clear to me who the parties  25 are.</p>	<p style="text-align: right;">117</p> <p>1                   B. Ullmann  2 is really what happened.  3 A. I fully misunderstood.  4 Q. Looking at this signature block,  5 who do you understand the parties to this  6 agreement to be?  7 A. Phat Fashions, LLC and Tornado  8 Imports. I apologize, I most definitely  9 misunderstood. I apologize.  10 Q. Mr. Ullmann, given that, in your  11 perspective -- well, Mr. Ullmann, do you  12 recall seeing this document signed by  13 Issie on March 30, 2006? --  14                   MR. HOFFMAN: DX4?  15                   MR. OFFENHARTZ: Yes.  16 A. I don't recall actually having seen  17 it. I'm not certain if I've seen it ever  18 with a signature.  19 Q. Including on Tuesday?  20 A. Including on Tuesday. I don't  21 recall seeing it.  22 Q. Do you recall telling Mr. Nathanson  23 what he should do with this document;  24 Defendant's Exhibit 4?  25 A. No, I don't recall.</p>

<p>1 B. Ullmann 2 Q. Do you know what Mr. Nathanson did 3 with this document? 4 A. I don't know, but I have an 5 expectation of what he should have done. 6 Q. Please tell me what he should have 7 done with it? 8 A. My expectation is that he would 9 have forwarded it to Peter Morris. 10 Q. What would he have asked Mr. Morris 11 to do? 12 MR. HOFFMAN: Objection to 13 the form. What should he have 14 asked Mr. Morris to do? 15 I object to the form. It's 16 a hypothetical question. 17 THE WITNESS: Everything is 18 hypothetical because I don't know 19 it. 20 MR. OFFENHARTZ: Can you 21 read back the witness' answer. I 22 was simply asking you to elaborate 23 on your answer. 24 (Whereupon the record was 25 read back by the reporter.)</p>	<p>118 1 B. Ullmann 2 have documents executed without your 3 permission, would you? 4 MR. HOFFMAN: Objection to 5 the form. By whom? 6 MR. OFFENHARTZ: Let me ask 7 the question again. 8 MR. HOFFMAN: That would be 9 good. 10 MR. OFFENHARTZ: Why don't 11 you mark this as Defendant's 12 Exhibit No. 5 -- I withdraw the 13 question. 14 Q. This is Defendant's Exhibit No. 5. 15 A. Thank you. 16 Q. Take a moment please to review this 17 document. 18 A. Yes. 19 MR. OFFENHARTZ: This is a 20 document bearing the Bates number 21 PF0153 through 0157. 22 MR. HOFFMAN: They were not 23 produced to you attached this way. 24 The document that is 154 through 25 157 was produced separately, as was</p>
<p>1 B. Ullmann 2 Q. My question to you is: Why is that 3 your expectation? 4 A. Well, that would be typically how 5 we treat the paper flow. 6 Q. What would you expect Mr. Nathanson 7 to ask Mr. Morris to do? 8 A. Well, Nathanson is not really in a 9 position to ask Peter Morris to do 10 anything. But my expectation is, again, 11 that Peter Morris, upon receipt of such a 12 document, would typically start a 13 processing. He would circulate it. 14 And what would -- well -- but in 15 the hypothetical, I don't know that this 16 happened, so I have to be very clear. 17 MR. HOFFMAN: Since there 18 are documents covering all this, 19 why do we have to play the guessing 20 games? Really. 21 THE WITNESS: You know what 22 happened? I'm the only one that 23 doesn't. 24 Q. Don't worry, you will soon. You 25 would never expect one of your lawyers to</p>	<p>119 1 B. Ullmann 2 page 153 and you're giving it to 3 him stapled and they were not 4 produced to you that way, and I 5 know that because I did the 6 production and these documents have 7 never been attached together. So 8 this really should be two separate 9 exhibits. 10 MR. OFFENHARTZ: What we're 11 going to do is turn these into two 12 exhibits. Let me have it back. 13 We'll start with Defendant's 14 Exhibit 5, which remains as, now, a 15 one-page document. Defendant's 16 Exhibit 5 is PF0153, a one-page 17 document. 18 (Whereupon PF0153, a 19 one-page document was marked 20 Defendant's Exhibit 5 for 21 identification as of this date.) 22 Q. Can you identify this document, 23 please? 24 A. It appears to be a letter from Eli 25 Nathanson to Peter Morris and it's</p>

<p>1 B. Ullmann  2 regarding the receipt of a signed  3 amendment and Eli's expectation of us  4 following standard operating procedures in  5 processing.  6 Q. You just mentioned standard  7 operating procedures in processing; what  8 is the standard operating procedures in  9 processing?  10 A. Peter would physically be  11 responsible for getting the first  12 signature, which is Russell Simmons.  13 Q. It was Eli's expectation, on  14 April 5th, that apparently that's what  15 Peter would do; is that correct?  16 MR. HOFFMAN: Objection to  17 the form.  18 A. Looking at this exhibit, it appears  19 to be his expectation.  20 Q. You're cc'd on this letter, aren't  21 you?  22 A. I am.  23 Q. Do you recall reviewing or  24 receiving this letter?  25 A. I don't recall.</p>	<p>122</p> <p>1 B. Ullmann  2 So there are many steps between  3 this cover letter and a fully-executed  4 agreement. But Eli wouldn't necessarily  5 know because he was not part of that  6 process.  7 Q. Per this letter, Mr. Nathanson  8 certainly expected that the amendment  9 would be executed; isn't that correct?  10 MR. HOFFMAN: Objection to  11 the form.  12 A. I can't speak to Mr. Nathanson's  13 expectation.  14 Q. Can you read into the record what  15 the second paragraph states?  16 A. "Please arrange to have  17 countersigned where indicated and return  18 one fully-executed original to me. Please  19 keep one original for your records.  20 Thanks."  21 Q. How long have you been in business?  22 A. Overall?  23 Q. Since you graduated in '85, right?  24 A. That would be accurate.  25 Q. It's a lot of years?</p>
<p>123</p> <p>1 B. Ullmann  2 Q. You mentioned that Mr. Morris would  3 get Mr. Simmons' signature. Mr. Nathanson  4 appears, through this letter, to be  5 expecting Mr. Morris to get whatever  6 signatures might be required.  7 If you look at the second  8 paragraph, would you agree?  9 A. I agree, but it's not accurate.  10 MR. HOFFMAN: Objection to  11 the form as well.  12 A. His expectation is incorrect.  13 Q. Can you explain to me how his  14 expectation is incorrect?  15 A. Whenever we are preparing to fully  16 execute an agreement, Kellwood legal would  17 prepare an executive summary. The  18 executive summary is then prepared back to  19 me. I initial it to say that it's okay  20 and then I will have to, after an  21 executive summary is done, present the  22 full set of circumstances to Bob Skinner  23 and, most likely, then Kellwood legal  24 would present the document to Bob for  25 signature thereafter.</p>	<p>125</p> <p>1 B. Ullmann  2 A. Yes.  3 Q. I graduated from college in that  4 year, I know.  5 MR. HOFFMAN: He had to say  6 that.  7 A. Exactly, thank you. Point  8 well-taken.  9 Q. As you sit here right now reading  10 this, is there really any doubt in your  11 mind that Eli's expectation in writing  12 this letter was to have the amendment  13 fully executed?  14 MR. HOFFMAN: Objection to  15 the form.  16 A. I'm happy to answer. Eli Nathanson  17 is an outside Counsel. I can't speak to  18 his expectation, but it doesn't matter.  19 Q. I understand your position. What  20 I'm asking you is: Reading that second  21 paragraph, is there any doubt in your mind  22 that the person who wrote that fully  23 anticipated that the amendment would be  24 executed and returned to them?  25 MR. HOFFMAN: Same</p>

1 B. Ullmann  
2 required two signatures and since I hadn't  
3 presented anything to Bob Skinner, Bob  
4 Skinner obviously hadn't executed  
5 anything; hence, it's not a  
6 legally-binding document.

7 Q. Can you think of any other example  
8 of Mr. Simmons executing a document on  
9 behalf of Phat Fashions where, in your  
10 opinion, the document was never -- never  
11 received any additional signatures that,  
12 in your view, were required?

13 MR. HOFFMAN: Objection to  
14 the form.

15 A. I wasn't even aware of the fact  
16 that he signed this one.

17 Q. You became aware of it in the fall  
18 of 2006, which is almost a year ago?

19 MR. HOFFMAN: Objection to  
20 the form.

21 A. Yes.

22 Q. You've been the president of Phat  
23 Fashions since February of 2004, correct?

24 A. Yes.

25 Q. In your time at Phat Fashions, are

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1 B. Ullmann  
2 are aware of, like this one, where you  
3 contend Mr. Simmons signed an a agreement  
4 that he should not have signed?

5 MR. HOFFMAN: Objection to  
6 the form.

7 MR. OFFENHARTZ: Let me  
8 start over.

9 Q. Can you think of any other  
10 situation in which Phat Fashions took the  
11 position that it did not have a contract  
12 with a party because Mr. Simmons signed  
13 the amendment or contract, but Mr. Skinner  
14 did not?

15 MR. HOFFMAN: Objection to  
16 the form. You can answer.

17 A. I can think of a number of  
18 instances where Russell Simmons would have  
19 signed an agreement, an amendment and  
20 there would be a long time that passed  
21 between when Russell Simmons signed and it  
22 was presented to Bob Skinner for  
23 signature.

24 In that period, these agreements --  
25 that would be all the agreements would

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1 B. Ullmann  
2 you aware of any other instance in which  
3 the CEO of Phat Fashions, Russell Simmons,  
4 executed a document that, in your view,  
5 still required an additional signature to  
6 be fully executed?

7 MR. HOFFMAN: Objection to  
8 the form.

9 A. You need to restate the last part  
10 of the question; am I aware of -- can you  
11 restate it?

12 MR. OFFENHARTZ: Can you  
13 read the question back, please.

14 (Whereupon the record was  
15 read back by the reporter.)

16 A. The answer is yes.

17 Q. Can you tell me what those examples  
18 are?

19 A. It would be every single agreement  
20 that we ever signed. There wasn't one  
21 single agreement that didn't require more  
22 than Russell Simmons' signature.

23 MR. HOFFMAN: That was the  
24 way you asked the question.

25 Q. Are there any instances that you

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1 B. Ullmann  
2 have one signature on it, just like this  
3 agreement, Russell Simmons, and it  
4 wouldn't have a second. Whether or not  
5 any of those documents ultimately were not  
6 signed by Bob Skinner, I cannot recall.

7 Q. Do you think that ever happened?  
8 MR. HOFFMAN: Objection to  
9 the form.

10 A. It's possible.

11 Q. You can't think of an example?

12 A. It's possible.

13 Q. You cannot think of an example?

14 A. I cannot think of an example right  
15 here without reviewing records. As I  
16 said, every single contract is at one

17 stage, at the stage that this was on.

18 Q. Who, at the company, would know the  
19 answer to that question?

20 MR. HOFFMAN: The question  
21 about examples?

22 MR. OFFENHARTZ: Yes.

23 A. I don't know that anyone would know  
24 offhand, but upon review of records, I  
25 would say maybe possibly Luther Rollins,

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	158 <p>B. Ullmann MR. OFFENHARTZ: Let's talk protective order a little later in the day. I'll come back to this question after we talk about it. No reason to --</p> <p>MR. HOFFMAN: I think you got the gist of where he was going with it anyway.</p> <p>Q. You don't recall receiving this Saturday, April 22nd e-mail, do you?</p> <p>MR. HOFFMAN: Exhibit 8?</p> <p>MR. OFFENHARTZ: Exhibit 8.</p> <p>Q. You need to answer audibly.</p> <p>A. At this point, I'm still talking to myself. I don't recall it.</p> <p>Q. Mr. Ullmann, was it your practice to correct your colleagues when they did not understand the status of a given project?</p> <p>MR. HOFFMAN: Objection to the form.</p> <p>A. Not really because the process was such that any misunderstandings, errors or unclarities would be cleared up in the</p>	160 <p>B. Ullmann Issie Wiseman in April or May regarding the status of the licensee amendment agreement?</p> <p>MR. HOFFMAN: Objection. Asked and answered.</p> <p>MR. OFFENHARTZ: I'm seeing if perhaps, as time passes --</p> <p>MR. HOFFMAN: I know, I'm putting my objection on. He can answer.</p> <p>A. No, I do recall having had conversations; I cannot recall, specifically or generally, what was discussed.</p> <p>Q. Was the amendment discussed in April or May?</p> <p>A. It's possible.</p> <p>Q. Do you remember what that conversation was?</p> <p>A. I'm sorry, I don't.</p> <p>Q. Do you recall Issie asking you words to the effect of, Bernt, where are we? Waiting on the signature page; what's going on?</p>
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	159 <p>B. Ullmann final stage, which involved executive summary initially and then, ultimately, Bob Skinner's signature.</p> <p>Q. To the best of your recollection, on Saturday, April 22, 2006, did you believe that the Tornado licensee agreement amendment was completely done and all it needed was Bob's signature?</p> <p>MR. HOFFMAN: Objection to the form.</p> <p>A. I don't recall.</p> <p>Q. Let me ask you this way: Had you read this e-mail on April 22nd, would you have thought that Mr. Morris had made a mistake?</p> <p>MR. HOFFMAN: Objection to the form. Mistake about what?</p> <p>Q. Mr. Ullmann, you can answer the question.</p> <p>MR. HOFFMAN: Objection to the form.</p> <p>A. No. No, it doesn't look like a mistake.</p> <p>Q. Do you recall any discussions with</p>	161 <p>B. Ullmann A. I don't recall that.</p> <p>Q. When I say "words to the effect," please don't -- do us all a favor: Don't be thinking, All right, I never heard him use those exact words. I'm trying to get your testimony.</p> <p>A. I understand. I understand the nature of the question and I'm trying to give you a truthful response. The truthful response is I don't recall. It doesn't mean it didn't happen; it means I don't recall.</p> <p>Q. Mr. Ullmann, what was your understanding, say on April 22, 2006, of the status of the licensee agreement amendment?</p> <p>A. Again, I don't recall.</p> <p>MR. OFFENHARTZ: Can you mark this, please, as Exhibit 9. (Whereupon E-mail from witness to Mr. Gramke was marked Defendant's Exhibit 9 for identification as of this date.)</p> <p>Q. Mr. Ullmann, I'm handing you what's</p>

<p>1 B. Ullmann  2 been marked as Exhibit 9.  3 A. Thank you.  4 Q. You're welcome. Can you please  5 take a moment to review the document.  6 MR. HOFFMAN: When I  7 produced it, it did have the  8 attachments with it. The  9 attachments are numbered, if you  10 need them, 169 to 175. I'm not  11 saying that's for the question; I'm  12 just pointing it out.  13 A. I'm done reviewing it.  14 Q. The top part of this e-mail is an  15 e-mail from you to Mr. Gramke; is that  16 correct?  17 A. Yes, it is.  18 Q. You cc Peter Morris and Annie  19 Walker?  20 A. I can see I am doing that.  21 Q. You write that, "Don: Bob has  22 asked me to hold off on Canada," in the  23 first sentence of the e-mail; do you see  24 that?  25 A. Yes.</p>	<p>162</p> <p>1 B. Ullmann  2 MR. HOFFMAN: Objection to  3 the form.  4 Q. You can answer.  5 A. I'm thinking, to make sure I'm  6 giving an accurate answer. I truly --  7 he's the chairman of the company. I don't  8 believe that he shared it with me; I think  9 simply he said hold off.  10 Q. Is that a recollection of yours or  11 is that less than a recollection, but it's  12 a -- you earlier said you just don't  13 recall the conversation that led you to  14 write this. I'm trying to get the basis  15 for what you just said. Help me out,  16 please.  17 A. It's true. My belief, which is the  18 best I can say, is that Bob didn't share  19 with me, at the time, his thoughts or  20 reasons for wanting to hold off.  21 Q. Prior to Bob Skinner asking you to  22 hold off on Canada, you were prepared to  23 move forward on Canada; were you not?  24 MR. HOFFMAN: Objection to  25 the form.</p>
<p>1 B. Ullmann  2 Q. I've read that correctly?  3 A. Yes.  4 Q. Do you recall a discussion with Bob  5 Skinner to which you were referring in  6 this e-mail?  7 A. I don't.  8 Q. Do you recall writing this e-mail?  9 A. I don't.  10 Q. Do you recall anything about the  11 discussion you had with Mr. Skinner that  12 led you to write this e-mail?  13 A. I do not recall our conversation.  14 Q. Do you recall why Mr. Skinner asked  15 you to hold off on Canada?  16 A. I don't know why.  17 Q. Let me clarify. You just said you  18 don't know why; does that mean you don't  19 remember why or he never told you why?  20 MR. HOFFMAN: With respect  21 to this e-mail?  22 Q. With respect to this e-mail.  23 A. With respect to this e-mail, I  24 don't know why.  25 Q. What is the basis for that answer?</p>	<p>163</p> <p>165</p> <p>1 B. Ullmann  2 A. I had been engaging in a dialogue  3 in good faith with Issie Wiseman and  4 Tornado and I was preparing to move  5 forward. I think I want to -- I need to  6 kind of clarify some process here.  7 I hadn't, at this point, fully  8 wrapped my hands around it yet. So it's  9 true that I had advanced it to this stage  10 in good faith. I was now going to prepare  11 to actually take on all the facts and go  12 and present it to Bob Skinner, my boss,  13 the chairman of the company.  14 I hadn't fully done that yet. So I  15 would say that through this process, I  16 acted in good faith; I advanced the  17 process through. I can't say that I had  18 full ownership yet because I hadn't gone  19 in front of him to present it.  20 Q. Prior to Mr. Skinner informing you  21 to hold off on Canada, you were preparing  22 to continue the process and move forward  23 on Canada with Tornado; is that correct?  24 MR. HOFFMAN: Objection to  25 the form.</p>

<p>1 B. Ullmann 2 A. The process is such that it is 3 taken to an executive summary and then 4 it's presented to Bob and then a decision 5 is made as to how we proceed. So I was, 6 indeed, proceeding toward that stage, 7 knowing full-well that at that stage, the 8 final decision regarding how we would be 9 proceeding would be made. It could be 10 that we proceeded and concluded or we had 11 to go back and revisit or it could be 12 rejected. 13 Q. What was your expectation on 14 April 22, 2006, about where this process 15 would end up? 16 MR. HOFFMAN: April 22nd? 17 MR. OFFENHARTZ: I can ask 18 about April 22nd. Fair point. 19 Fair point. 20 Q. On May 23rd of 2006, to the extent 21 you recall, your expectation was that you 22 would be renewing with Tornado; wasn't it? 23 MR. HOFFMAN: Objection to 24 the form. 25 A. No, I had no such expectations.</p>	<p>166</p> <p>1 B. Ullmann 2 MR. HOFFMAN: It's only 3 where you put the comma. He's 4 given the testimony, you had 5 changed it and now he's going to go 6 and explain it. 7 MR. OFFENHARTZ: Mr. Hoff 8 man, please don't speak for your 9 witness. 10 MR. HOFFMAN: I'm not 11 speaking for my witness, but you 12 are and you're not supposed to be 13 either. 14 MR. OFFENHARTZ: Please, 15 it's very unprofessional. 16 MR. HOFFMAN: Adam -- Adam, 17 don't pull that stuff with me 18 again. 19 MR. OFFENHARTZ: Mr. Hoff 20 man, lower your voice and if you 21 point your finger at me one more 22 time, I'm going to call the Court 23 and say you're behaving like a 24 child. 25 MR. HOFFMAN: Don't you dare</p>
<p>167</p> <p>1 B. Ullmann 2 No, that is not accurate. I knew exactly 3 what the process was. My expectation was 4 simply to advance this so I can present it 5 to Bob and that was my only expectation. 6 I could not speak to what Bob Skinner 7 might decide to do and hence, I didn't 8 have expectation as to how anything would 9 end up. 10 I mean, I presented deals to him 11 that were executed, completely unchanged. 12 I have had deals where I had to go back 13 and revisit numbers and I have had deals, 14 at this stage, that were outright rejected 15 and never moved forward. All three 16 happened. 17 Q. You said you brought him executed 18 deals; deals executed by Russell Simmons 19 that he rejected? 20 A. No, I didn't say that I brought him 21 executed deals. 22 MR. OFFENHARTZ: Let's hear 23 the answer. 24 (Whereupon the record was 25 read back by the reporter.)</p>	<p>169</p> <p>1 B. Ullmann 2 call me unprofessional the way 3 you've acted in this case. Don't 4 you dare. 5 MR. OFFENHARTZ: Don't point 6 your finger at me. Don't point 7 your finger at me; it's very 8 unprofessional. 9 MR. HOFFMAN: Act 10 professional. 11 MR. OFFENHARTZ: Mr. Hoff 12 man, it's very unprofessional to 13 point your finger at your 14 adversary. 15 MR. HOFFMAN: Ask your 16 questions. I'll play your game. 17 Q. Do you know the address of Rush 18 Communications? 19 A. I do. 20 Q. What is the address of Rush 21 Communications? 22 A. It's 512 Seventh Avenue. 23 Q. Do you know who represented 24 Mr. Simmons in his negotiations departing 25 from Kellwood or Phat Fashions; do you</p>

<p>1 B. Ullmann  2 know which law firm?  3 A. Offhand, I don't.  4 Q. You mentioned that he violated  5 Kellwood guidelines by using abusive  6 language?  7 MR. HOFFMAN: Objection.  8 Direct the witness not to answer.  9 MR. OFFENHARTZ: You're  10 directing the witness not to  11 answer?  12 MR. HOFFMAN: Yes.  13 MR. OFFENHARTZ: On what  14 grounds?  15 MR. HOFFMAN: On grounds  16 that it's confidential. It has  17 nothing to do with this case.  18 MR. OFFENHARTZ: You're  19 instructing a witness not to answer  20 a question on grounds other than  21 privilege?  22 MR. HOFFMAN: In this  23 particular instance --  24 MR. OFFENHARTZ: Thank you.  25 Q. Mr. Ullmann, are you going to</p>	<p>170</p> <p>1 B. Ullmann  2 client; I'm his lawyer.  3 Q. Are you going to listen to your  4 lawyer's instructions?  5 A. I assume I should.  6 MR. HOFFMAN: Do you want to  7 answer the question without my  8 instruction?  9 THE WITNESS: You're  10 Counsel; you're here to direct me.  11 MR. HOFFMAN: You have  12 already received answers to  13 questions about it and we said we  14 will discuss it later on.  15 MR. OFFENHARTZ: No --  16 MR. HOFFMAN: You're  17 interrupting me again.  18 Q. Mr. Ullmann, what was the language  19 that Mr. Simmons used that was considered  20 abusive?  21 MR. HOFFMAN: I direct the  22 witness not to answer. Objection.  23 Now you're harassing the witness.  24 Q. Mr. Ullmann, do you understand that  25 you may well have to come back after these</p>
<p>1 B. Ullmann  2 answer the question?  3 A. I'm at a loss.  4 Q. You answered the same question  5 earlier today.  6 MR. HOFFMAN: Exactly. So  7 you've got the answer.  8 MR. OFFENHARTZ: Put your  9 hand down.  10 MR. HOFFMAN: Stop it. I'll  11 point my fingers where I want to  12 point. It's not pointing at you;  13 it's a figure of speech. People  14 talk with their hands.  15 MR. OFFENHARTZ: People also  16 generally don't point fingers at  17 other people.  18 Q. Mr. Ullmann, what exact behavior  19 did Mr. Simmons engage in that constituted  20 a breach of Kellwood's guidelines?  21 MR. HOFFMAN: I direct the  22 witness not to answer.  23 Q. Are you going to listen to your  24 client's instructions?  25 MR. HOFFMAN: I'm not his</p>	<p>171</p> <p>1 B. Ullmann  2 two days are up to answer questions that  3 you've been instructed not to answer?  4 MR. HOFFMAN: Only if you're  5 right, Adam.  6 MR. OFFENHARTZ: I said  7 "may". May have to come back.  8 Q. Do you understand that?  9 A. I do now.  10 Q. Mr. Ullmann, on May 23, 2006, Bob  11 Skinner tells you to hold off on Canada;  12 that's correct, right?  13 A. Correct.  14 Q. Did Bob Skinner later tell you to  15 proceed with Tornado?  16 A. Not to the best of my recollection.  17 Q. On May 23, 2006, from your  18 perspective, Tornado, the Tornado  19 negotiations were over; is that correct?  20 MR. HOFFMAN: Objection to  21 the form.  22 A. No. Hold off is not the same as  23 rejected.  24 Q. Please tell me: What did you mean  25 by "hold off"?</p>

1 B. Ullmann  
2 A. It seems to me that hold off means  
3 let's not move this forward now. It's  
4 holds the possibility of it possibly being  
5 moved forward later.

6 Q. Even on May 23, 2006, you still  
7 wanted the possibility of having an  
8 amendment with Tornado; is that correct?

9 MR. HOFFMAN: Objection to  
10 the form.

11 A. No, that's not correct. I had no  
12 particular desires; I wasn't looking for a  
13 particular result. The whole dialogue  
14 that led to the draft amendment was  
15 prompted by Issie Wiseman contacting me.  
16 I went through the motions of advancing  
17 that dialogue. When I was instructed to  
18 hold off, I held off.

19 Q. If I've gotten this wrong, tell me,  
20 but your testimony is -- well, let me ask  
21 you the question again.

22 By holding off, that did not mean  
23 it was no longer a possibility; is that  
24 correct?

25 MR. HOFFMAN: Objection to

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1 B. Ullmann  
2 prudent and proper to proceed with  
3 Mr. Bitton.  
4 Q. Mr. Ullmann, why did you wait until  
5 February of 2007 to inform Issie Wiseman  
6 that there would be no amendment from your  
7 perspective?

8 MR. HOFFMAN: Objection to  
9 the form.

10 A. I don't recall exactly when I did  
11 advise him the first time, even though I  
12 believe it was towards the end of January  
13 or beginning of February '07. And from my  
14 vantage point, I wasn't necessarily so  
15 much away as it was -- it was not a  
16 priority for me to get back to him. As  
17 you see, this was a status report.

18 I think we counted, on that  
19 particular report, that there were eleven  
20 entries. This was just one conversation  
21 of very many conversations.

22 Q. Mr. Ullmann, looking at Exhibit 9  
23 for a moment, on May 23rd, you write that  
24 Bob Skinner has asked you to hold off on  
25 Canada?

175  
1 B. Ullmann  
2 the form. Asked and answered.  
3 A. My view is I couldn't proceed with  
4 it then. Maybe we would get back to it  
5 later and maybe we wouldn't.

6 Q. What would be the deciding factor

7 whether or not you would get back to it

8 later?

9 A. It would be Bob Skinner.

10 Q. Did Bob Skinner ever come back to  
11 you and say, or explain to you why he

12 wanted to hold off with Tornado?

13 A. I have no recollection that he ever

14 explained it, but he did make an

15 introduction, as we have discussed, to

16 Gaby Bitton; the incidence could be

17 related, but I don't know that they are.

18 Q. Did you discuss your dealings with

19 Mr. Bitton or with Mr. Skinner?

20 A. Yes.

21 Q. In any of the discussions that you  
22 had with Mr. Skinner regarding Mr. Bitton,  
23 was Tornado discussed?

24 A. Only in the context of having  
25 received guidance from Counsel that it was

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1 B. Ullmann  
2 A. Correct.  
3 Q. Did you inform Issie Wiseman on May  
4 23rd that things were on hold; yes or no  
5 or you don't recall?  
6 A. I don't recall.  
7 Q. Did you inform Issie Wiseman that  
8 things were on hold in June 2006?  
9 A. I don't recall.  
10 Q. July of 2006?  
11 A. I don't recall.  
12 Q. August of 2006?  
13 A. I don't recall.  
14 Q. September of 2006?  
15 A. I don't recall.  
16 Q. October of 2006?  
17 A. I don't recall.  
18 Q. November of 2006?  
19 A. I don't recall.  
20 Q. December of 2006?  
21 A. I don't recall.  
22 MR. HOFFMAN: Careful now.  
23 Q. In January of 2007 or in February  
24 of 2007, what did you inform Mr. Wiseman  
25 of?



<p>1 B. Ullmann 2 MR. HOFFMAN: It's not yes 3 or no. 4 MR. OFFENHARTZ: You know 5 something -- 6 Q. Mr. Ullmann, will you please look 7 at Exhibit No. 9? 8 A. Yes. 9 Q. What is the date on Exhibit No. 9; 10 we can do it this way. 11 MR. HOFFMAN: I was 12 objecting to -- he was answering a 13 question and you stopped him from 14 answering; that's what I was 15 objecting to, not the question. 16 You didn't let him answer. 17 Q. What is the date on Exhibit No. 9? 18 A. 5/23/2006. 19 Q. That's when you first learned that 20 Bob Skinner wanted you to put Tornado on 21 hold, correct? 22 MR. HOFFMAN: Objection to 23 the form. 24 A. And as already testified, it was 25 true, it was on hold; which is different</p>	<p>182 1 B. Ullmann 2 Q. Why do you seriously doubt it? 3 A. Because we were still just on hold. 4 Q. When did you go from being on hold 5 to recommending to Mr. Skinner that you 6 were done with Tornado? 7 A. I cannot recall. 8 Q. Was it in July of 2006? 9 A. I think it was more in January, 10 February of 2007; that would be my guess. 11 It's a guess; it's not a recollection. 12 Q. What were the factors that led you 13 to guess that that's when you decided to 14 be done with Tornado? 15 A. Rephrase the question, please. 16 MR. OFFENHARTZ: Can you 17 read the question back, please. 18 (Whereupon the record was 19 read back by the reporter.) 20 A. You want me -- the factors that led 21 me to guess or do you want me to guess 22 what the factors were? 23 Q. Mr. Ullmann, you testified that you 24 guess you made a recommendation to 25 Mr. Skinner to terminate Tornado in</p>
<p>1 B. Ullmann 2 than being rejected. 3 Q. You never told Mr. Wiseman that the 4 deal was on hold, did you? 5 MR. HOFFMAN: Objection to 6 the form. Asked and answered. 7 A. I don't recall all the way up to 8 January or February, when I do recall. 9 Q. How long had you been in business 10 with Mr. Wiseman? 11 A. Personally, since February of 2004. 12 Q. When exactly did the decision -- 13 who made the decision to go from holding 14 off on Tornado to being done with Tornado? 15 A. Ultimately, I made the 16 recommendation. 17 Q. To whom did you make the 18 recommendation? 19 A. Bob Skinner. 20 Q. When did you make the 21 recommendation that Tornado go from being 22 on hold to being over? 23 A. No recollection. 24 Q. Was it in June of 2006? 25 A. I seriously doubt it.</p>	<p>183 1 B. Ullmann 2 January or February; what makes you guess 3 it was January or February? 4 A. Well, I am thinking so because 5 that's when we know that I notified Issie. 6 Q. What were the reasons that prompted 7 you to go from on hold to terminate; 8 something had to prompt the change? 9 MR. HOFFMAN: Objection to 10 the form. 11 Q. What prompted the change? 12 MR. HOFFMAN: Objection to 13 the form. 14 A. I cannot recall the specific 15 reasons. I will say we had, by then, 16 received a lot of information about how 17 our brand was being managed in the 18 territory and it was unfavorable 19 information. The proposed minimums in the 20 agreement, while higher than what had 21 previously been done, are not impressive 22 at all by any business standard. All our 23 standard agreements go off at a royalty of 24 8 percent; this agreement was 25 grandfathering 7 percent.</p>

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1 B. Ullmann  
 2 By then, there had been a  
 3 falling-out with our Baby Phat licensee  
 4 and there was a major feud going on  
 5 between Baby Phat, our largest licensee  
 6 bar none -- it's our largest licensee by  
 7 far and there is, at this point, a vicious  
 8 feud between Baby Phat and Issie and some  
 9 separate entity that he's involved with.  
 10 So there were a number of reasons that  
 11 were unfavorable and it changed the  
 12 climate.

13 Q. How did your discussions with  
 14 Bitton fit into that climate?

15 MR. HOFFMAN: Objection to  
 16 the form.

17 A. Restate the question, please.

18 Q. What don't you understand about the  
 19 question?

20 A. I'm not sure if I understand it.

21 MR. HOFFMAN: He asked you  
 22 to restate it.

23 MR. OFFENHARTZ: I'm  
 24 asking -- it will help me restate  
 25 it if he can explain what he

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1 B. Ullmann  
 2 guidance.  
 3 Q. Mr. Ullmann, you recommended, or  
 4 you've testified that you recommended to  
 5 Mr. Skinner to terminate Tornado; is that  
 6 correct?

7 A. Yes.

8 MR. HOFFMAN: Objection to  
 9 the form. I don't believe that's  
 10 the testimony.

11 A. Oh, then, I didn't.

12 Q. You testified that you did, but if  
 13 your lawyer tells you that you didn't, if  
 14 you want to change your testimony based on  
 15 what Mr. Hoffman said, that's fine.

16 MR. HOFFMAN: Can we have it  
 17 read back. Please let me finish  
 18 and not talk over me. You're  
 19 making these statements; let's have  
 20 the reporter go back.

21 I do not believe that he  
 22 said he recommended they terminate  
 23 Tornado. They were talking about  
 24 discussions. Do a search for the  
 25 word.

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1 B. Ullmann  
 2 doesn't understand about it.  
 3 A. I said restate. I didn't  
 4 understand it, but maybe re-read it and  
 5 I'll understand it.

6 MR. OFFENHARTZ: Please read  
 7 back the question.

8 (Whereupon the record was  
 9 read back by the reporter.)

10 A. Fit into the climate?

11 Q. Climate was a phrase you used.

12 A. I know, but I still don't  
 13 understand it.

14 Q. Mr. Ullmann, please tell me the  
 15 role that your negotiations with Bitton  
 16 played in deciding to terminate Tornado?

17 A. I think that was one out of a  
 18 number of factors.

19 Q. Am I to understand that you would  
 20 have terminated Tornado even without  
 21 finalizing your deals with Bitton?

22 MR. HOFFMAN: Objection to  
 23 the form. You can answer.

24 A. It wasn't my ultimate decision. At  
 25 the time, I was relying upon Bob Skinner's

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1 B. Ullmann  
 2 (Whereupon the record was  
 3 read back by the reporter.)

4 A. Can I clarify something, please.  
 5 Under no circumstance would I have

6 recommended that Tornado was terminated.  
 7 If I said that, I want it stricken or

8 rephrased because the agreement is  
 9 expiring and there are no new renewals.

10 Q. Just for clarity sake, and that is  
 11 a fair point, did there come a time when  
 12 you recommended to Mr. Skinner that there  
 13 be no amendment with Tornado?

14 A. I believe that is true.

15 Q. You may recall, just a few minutes  
 16 ago we went around and around on when you  
 17 thought that recommendation had been made  
 18 to Mr. Skinner?

19 A. Yes.

20 Q. I think just maybe two minutes ago,  
 21 I asked you whether you indeed had  
 22 recommended to Mr. Skinner that Phat  
 23 Fashions not proceed with Tornado and I  
 24 think that's what drew your lawyer's ire?

25 MR. HOFFMAN: No, you asked

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1                   B. Ullmann  
 2 Q. Did you do that?  
 3 A. I don't know. I don't recall.  
 4                   MR. OFFENHARTZ: Can you  
 5 read back the last question and  
 6 answer.  
 7                   (Whereupon the record was  
 8 read back by the reporter.)  
 9 Q. This is marked as Exhibit 10. Have  
 10 you seen this document before, Mr.  
 11 Ullmann?  
 12 A. I have.  
 13 Q. How recently have you seen this  
 14 document?  
 15 A. I would say I saw it on Tuesday.  
 16 Q. Who showed this document to you on  
 17 Tuesday?  
 18 A. My Counsel.  
 19 Q. By your Counselor, you're referring  
 20 to whom?  
 21 A. Mr. Phil Hoffman.  
 22 Q. How long did you spend talking with  
 23 Mr. Hoffman about this document?  
 24                   MR. HOFFMAN: I'm going to  
 25 object. Attorney work product.

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1                   B. Ullmann  
 2 A. I don't recall.  
 3 Q. What was the state of negotiations  
 4 with Mr. Bitton in January of 2007?  
 5 A. Again, I don't recall. I can infer  
 6 based upon the e-mail.  
 7 Q. What do you infer based upon this  
 8 e-mail?  
 9 A. I infer that there were dialogues  
 10 that hadn't been concluded.  
 11 Q. What do you mean by dialogues had  
 12 not been concluded?  
 13 A. I mean that there were discussions  
 14 about Gaby Bitton taking over the  
 15 stewardship of our brand in Canada. There  
 16 was also a dialogue about the role at our  
 17 retail stores in the United States and it  
 18 seems to me, while we must have had good  
 19 negotiations, good conversations, they  
 20 were, at this stage, inconclusive.  
 21 Q. When did they become conclusive  
 22 following January 24, 2007?  
 23 A. I don't recall.  
 24 Q. Ballpark? A month ago, February of  
 25 2007, September of 2007?

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1                   B. Ullmann  
 2 It's privilege. That's an  
 3 objection. You don't have to  
 4 answer that. It's privileged.  
 5                   MR. OFFENHARTZ: I'm not  
 6 sure I agree with you, but I'll  
 7 think about it.  
 8                   MR. HOFFMAN: You know what  
 9 Adam, honestly, it's not really a  
 10 big deal to me. If you want to ask  
 11 him and he wants to answer and if  
 12 he remembers, it's fine.  
 13                   Go ahead, why don't you  
 14 answer.  
 15                   MR. OFFENHARTZ: If it's not  
 16 a big deal -- that's fine. I can  
 17 agree with you, but you objected.  
 18 I don't agree with your objection,  
 19 but I agree with why you objected.  
 20 A. It was brief. To the best of my  
 21 recollection, a minute, something like  
 22 that; not more.  
 23 Q. Do you recall writing this e-mail  
 24 to Mr. Bitton on or about January 24,  
 25 2007?

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1                   B. Ullmann  
 2 A. I don't know. In terms of  
 3 conclusive, I can say the retail deal  
 4 remained inconclusive well into August,  
 5 September of 2007. And actually, the  
 6 reality is -- I do recall now -- the  
 7 Canadian deal, as well, remained opened  
 8 for a very long time; at least until June,  
 9 maybe even July of this year.  
 10 Q. What do you mean by remained open?  
 11 A. I mean there were unnegotiated  
 12 points that were open points.  
 13 Q. Would you say you were 95 percent  
 14 of the way there by February 1, 2007?  
 15 A. I don't think there is any such  
 16 thing as being 95 percent anywhere in the  
 17 contract. It's either completely done and  
 18 it's only done when it's signed or it's  
 19 not. I can't speculate to you. In my  
 20 mind, it could have been there and they  
 21 could have been somewhere else.  
 22 Q. In your mind, where were you on  
 23 February 1, 2007?  
 24 A. I do not recall that accurately.  
 25 It seems to me that I'm trying to push, at

<p>1 B. Ullmann  2 Do you see that?  3 A. Yes.  4 Q. Who were you waiting for further  5 info from on the retail deal?  6 A. From Gaby.  7 Q. When did you have those discussions  8 with Mr. Bitton?  9 A. I don't recall. It could be, from  10 all I know, going back to Exhibit 10.  11 Where I'm saying we're still looking to  12 fully negotiate the term sheets and that's  13 on January 24th. I don't know from  14 October to January, it's possible.  15 Q. When did Mr. Bitton finally provide  16 you whatever information you were waiting  17 on from him?  18 A. I don't recall. It appears clear  19 that on January 24, 2007, I still did not  20 have all the information that I was  21 looking for.  22 MR. OFFENHARTZ: Can you  23 mark this as 12, please.  24 (Whereupon Document that  25 bears Bates numbers PF0203 through</p>	<p>218</p> <p>1 B. Ullmann  2 Q. Did you write them down by hand and  3 have your assistant fax them?  4 A. Definitely not.  5 Q. Did you send him comments?  6 A. Specifically on this deal or in  7 general?  8 Q. On October 31th, you indicated to  9 Mr. Nathanson that you would review the  10 draft agreement he sent you and advise  11 accordingly.  12 Do you recall how you advised  13 Mr. Nathanson accordingly?  14 A. I don't.  15 Q. You don't recall if you marked the  16 document up and e-mailed it back to him?  17 A. I don't.  18 Q. You don't recall if you picked up  19 the phone and discussed it with him?  20 A. I don't.  21 Q. Do you recall what he meant by --  22 did you ask him to forward it on to anyone  23 else?  24 A. Not to the best of my recollection.  25 MR. OFFENHARTZ: If you can</p>
<p>1 B. Ullmann  2 PF0207 was marked Defendant's  3 Exhibit 12 for identification as of  4 this date.)  5 Q. Number 12. Please take a moment to  6 review it. This is a document that bears  7 Bates numbers PF0203 through PF0207.  8 On the first page of this exhibit,  9 in the middle, Mr. Nathanson is sending to  10 you a draft agreement for the new Canadian  11 licensee. He's asking you to please  12 review and let him know if you have any  13 comments.  14 Your response, which you sent later  15 that day is, you will review tomorrow and  16 advise accordingly. Do you recall what  17 comments you had?  18 A. I don't.  19 Q. Do you recall how you conveyed your  20 comments to Mr. Nathanson?  21 A. I don't.  22 Q. Did you send them by e-mail?  23 A. I don't know.  24 Q. Did you send them by telephone?  25 A. I don't recall.</p>	<p>219</p> <p>218</p> <p>1 B. Ullmann  2 mark that as Exhibit 13.  3 (Whereupon Document  4 Bates-stamped PF0208 through PF0212  5 was marked Defendant's Exhibit 13  6 for identification as of this  7 date.)  8 MR. OFFENHARTZ: This  9 document is Bates-stamped PF0208  10 through PF0212.  11 Q. Have you had a chance to review  12 this?  13 A. I have.  14 Q. Mr. Ullmann, do you recall on  15 Thursday, November 2, 2006, sending what  16 you describe as a first draft of our  17 agreement for Canada to Marc Kakon at  18 Algo, Gaby at Buffalo Jeans and perhaps  19 Don Elituv at rogers.blackberry.net?  20 A. No, I don't recall doing it, but I  21 can see from the e-mail that I obviously  22 did.  23 Q. It appears that you sent the first  24 draft of your Canada agreement to Algo on  25 November 2nd, correct?</p>

1 B. Ullmann

2 A. Yes.

3 Q. Does this refresh your recollection  
4 whether you provided any comments to Eli  
5 Nathanson, looking at this document?

6 MR. HOFFMAN: On the draft  
7 that he had sent?

8 MR. OFFENHARTZ: Yes.

9 A. I don't recall, but I'm going to  
10 have to assume that I did.

11 Q. Why do you assume you did?

12 A. Based upon my comments from Exhibit  
13 12 that says I will review tomorrow and  
14 advise accordingly.

15 At the very least, I would have  
16 advised -- it may be no comments, but I  
17 would advise it's okay, please proceed;  
18 something like that.

19 Q. You don't recall what, if any, your  
20 comments were?

21 A. No, no.

22 Q. Mr. Ullmann, did you advise Issie  
23 Wiseman that you had provided a draft of a  
24 license agreement for a competitor in  
25 Canada on November 2, 2006?

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1 B. Ullmann

2 we would end up in the conversation.

3 And as I had indicated and  
4 testified to you earlier, there were a  
5 number of other things going on in our  
6 relationship with Mr. Wiseman.

7 Q. At any time from November on  
8 through late January or early February,  
9 when you informed Mr. Wiseman that you  
10 would not be proceeding with the executed  
11 amendment, did you ever inform him that  
12 you'd entered into and exchanged proposals  
13 with any other possible licensee?

14 MR. HOFFMAN: Objection to  
15 the form. An executed amendment?

16 A. Can you please re-ask the question.

17 MR. OFFENHARTZ: Can you  
18 repeat the question, please.

19 (Whereupon the record was  
20 read back by the reporter.)

21 A. I don't recall, but don't believe  
22 that I had.

23 Q. Is there any doubt in your mind  
24 that you didn't tell Mr. Wiseman anything  
25 of that nature?

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225

1 B. Ullmann

2 A. Why would I?

3 Q. I'm simply asking if you did. Your  
4 lawyer and I can argue and probably will  
5 for quite some time over whether or not  
6 you should have.

7 I'm simply asking: Did you advise  
8 Mr. Wiseman, on November 2nd, that you had  
9 provided a draft agreement for a license  
10 agreement to Gaby Bitton and his  
11 colleagues?

12 A. I don't recall, but it's quite  
13 certain that I wouldn't. I would say at  
14 this point, it had nothing to do with him.

15 Q. It would have nothing to do with  
16 Issie Wiseman that you were not going to  
17 amend the agreement; is that your  
18 testimony? —

19 MR. HOFFMAN: Objection to  
20 the form.

21 A. That is not my testimony. My  
22 testimony is that at this point, we were  
23 engaged in exploratory dialogue with  
24 potential other licensees and at that  
25 stage, there was no way of knowing where

1 B. Ullmann

2 MR. HOFFMAN: Objection to  
3 the form.

4 A. I testified that I don't recall.  
5 So the first time I recall having a  
6 dialogue with Mr. Wiseman about this is  
7 late January or early February. It does  
8 not necessarily mean that it is, indeed,  
9 the first time it takes place. It's the  
10 first time I can recall that it took  
11 place.

12 Q. Mr. Ullmann, would you turn to  
13 Exhibit 10, please. You have Exhibit 10  
14 in front of you?

15 A. I do.

16 Q. Do you recall what Mr. Bitton's  
17 response to this e-mail was, or  
18 Mr. Kakon's response?

19 A. I don't.

20 Q. Do you recall when they responded,  
21 if at all, to this e-mail?

22 A. I don't.

23 Q. Did they get back to you right  
24 away; did you have to send them another  
25 e-mail a month later? I'm just trying to

<p style="text-align: right;">226</p> <p>1                   B. Ullmann    2 help you refresh your recollection.    3 A. But I don't recall.    4 Q. Your recollection is that you    5 didn't finalize a deal for some time after    6 January 24th; is that correct?    7 A. My recollection is that neither the    8 Canadian deal nor the U.S. retail rollout    9 deal were finalized and executed until    10 after, I want to say June of this year.    11 The U.S. retail deal even later, much    12 later.</p> <p>13                   MR. OFFENHARTZ: Would you    14 mark this as Exhibit 14, please.    15                   (Whereupon One-page    16 document, bearing Bates number    17 PF0222 was marked Plaintiff's    18 Exhibit 14 for identification as of    19 this date.)</p> <p>20 Q. I'm handing you what has been    21 marked as Exhibit 14.    22 A. Yes.    23 Q. Exhibit 14 is a one-page document,    24 bearing Bates number PF0222.    25 Can you take a moment to review it,</p>	<p style="text-align: right;">228</p> <p>1                   B. Ullmann    2 when he would like to put closure on this?    3 A. Well, he's talking about his    4 intention of closing by the end of the    5 week.    6 Q. In fact, what he writes -- would    7 you read the last sentence that he writes,    8 please.    9 A. "We would also like to put closure    10 to this by the end of the week."    11 Q. Do you recall if Marc Kakon called    12 you Thursday or Friday, January 25 or 26,    13 2007?    14 A. I don't, but it would not be    15 surprising if he did not call back that    16 week.    17 Q. You don't recall either way?    18 A. I don't recall either way.    19 Q. When do you recall next speaking to    20 either Mr. Bitton or Mr. Kakon after    21 January 24, 2007?    22 A. The next time I really recall    23 speaking to them is at the MAGIC show in    24 Las Vegas in February. That's not to say    25 we didn't speak prior, but I recall seeing</p>
<p style="text-align: right;">227</p> <p>1                   B. Ullmann    2 please?    3 A. Yes.    4 Q. Does this refresh your recollection    5 of when either Mr. Bitton or Mr. Kakon    6 responded to your e-mail of Wednesday,    7 January 24th?    8 A. To the extent that this one    9 and-a-half lines constitute a response, we    10 have that in front of us here.    11 Q. Is this not a response?    12 A. Yes, it's a response.    13 Q. Does this refresh your recollection    14 of when they responded?    15 A. They responded promptly the same    16 day.    17 Q. What did they say or who actually    18 responded?    19 A. Gaby Bitton.    20 Q. What did he write?    21 A. He's suggesting that Marc will be    22 getting back to me via telephone. So he    23 speaks to an intent of Marc Kakon to call    24 me.    25 Q. What does Mr. Bitton write about</p>	<p style="text-align: right;">229</p> <p>1                   B. Ullmann    2 them there.    3 Q. You have no recollection either way    4 whether you spoke or didn't speak?    5 A. I don't.    6 Q. Did you come to understand what    7 Mr. Bitton meant by, "We would also like    8 to put closure to this by the end of the    9 week"?</p> <p>10 A. I think he's simply speaking to an    11 intent of having a meeting of the minds on    12 business terms.</p> <p>13 Q. When did you have a meeting of the    14 minds on business terms; not a    15 fully-executed document, but the phrase    16 you used, "a meeting of the minds of    17 business terms"?</p> <p>18                   MR. HOFFMAN: Objection to    19 the form.</p> <p>20 A. Sometime significantly later in the    21 spring.</p> <p>22 Q. Do you recall any other e-mails    23 exchanged with Marc Kakon or Gaby Bitton    24 and you or your colleagues?    25 A. I don't recall, but I expect that</p>

<p>242</p> <p>1 B. Ullmann  2 Q. Rush Communications is on?  3 A. 43.  4 Q. Mr. Ullmann, do you recall a  5 dispute that Issie Wiseman had with one of  6 Phat Fashions' licensees in Europe?  7 A. Yes.  8 Q. What do you recall about that  9 dispute?  10 A. I recall that a footwear licensee  11 of ours in Europe had sold off a smaller  12 partial of old inventory to a distributor  13 in eastern Europe and at least part of  14 that partial made it into the Canadian  15 market through its transshipment. It was  16 sold from one market and transshipped into  17 another market where it was not supposed  18 to go.  19 Q. When did this take place?  20 A. Sometime in 2005. Fall of 2005.  21 Q. Do you recall how this was brought  22 to your attention?  23 A. Yes, Issie told me about it.  24 Q. Do you recall how it got resolved?  25 A. Well, Issie was insisting that he</p>	<p>244</p> <p>1 B. Ullmann  2 A. \$25,000.  3 Q. When did you have this recent  4 review of the documents?  5 A. On Tuesday.  6 Q. Prior to Tuesday, would you have  7 had any recollection about these events?  8 A. I would have recollected the  9 events, but not the specific amount.  10 MR. OFFENHARTZ: Please mark  11 this as Defendant's Exhibit 15.  12 (Whereupon E-mail regarding  13 Unioncon was marked Defendant's  14 Exhibit 15 for identification as of  15 this date.)  16 Q. I'm handing you what has been  17 marked as Defendant's Exhibit 15. Take a  18 moment to review this document, please.  19 A. I'm ready.  20 Q. Is this a document you reviewed on  21 Tuesday?  22 A. I believe so.  23 Q. Did you review other documents on  24 this issue on Tuesday?  25 A. I don't think so. I don't even</p>
<p>243</p> <p>1 B. Ullmann  2 had been wronged. I attempted to actually  3 get some type of monetary compensation for  4 him from the European licensee, but came  5 to agree with the European licensee that  6 they hadn't shipped their side of the  7 territory.  8 They delivered the goods and could  9 provide evidence that they shipped the  10 goods inside of their territory. The  11 goods ended up in Canada through an  12 illegal transshipment and our European  13 licensee immediately terminated their  14 relationship with said distributor. So no  15 monetary damage was ever offered.  16 Q. What monetary amount were you  17 contemplating?  18 A. You know, I seem to recall, and  19 this I believe has to do with more recent  20 review of documents, I don't think I would  21 have had any independent recollection, to  22 be honest.  23 Q. What has your recent review of the  24 documents indicated to you that the  25 monetary value was?</p>	<p>245</p> <p>1 B. Ullmann  2 know if I reviewed the bottom half of the  3 page; I only recall the top.  4 Q. How did you go about attempting to  5 institute a modest financial penalty of  6 \$25,000 on Unioncon?  7 A. By having a dialogue with Unioncon,  8 their principals.  9 Q. Do you recall if that was by e-mail  10 or by telephone?  11 A. I don't recall, but believe that --  12 I don't recall. I do recall speaking with  13 them at least at one point, so for sure --  14 if not fully -- partially by phone.  15 Q. The recollection you have of the  16 discussion with Unioncon, is that before  17 or after August 11, 2005?  18 MR. HOFFMAN: Objection to  19 form.  20 A. I don't recall.  21 Q. Do you recall any discussions with  22 Unioncon after August 11, 2005?  23 A. No.  24 Q. You don't recall any efforts that  25 you may or may not have made with Unioncon</p>

246 1 B. Ullmann 2 to institute a modest financial penalty of 3 \$25,000, do you? 4 A. I don't. It says "stay tuned," so 5 it indicates that my intentions were to 6 follow up with Unioncon, but I don't 7 recall specifically when. You're asking 8 about dates. I don't recall dates. 9 Q. Do you recall that you did 10 follow-up with Unioncon? 11 A. I recall having at least one 12 conversation with Unioncon, where they 13 specifically explained the point that's 14 stated here. Namely that they sold a 15 legitimate account within their legitimate 16 territory and hence felt that no penalty 17 or financial compensation was due. But 18 whether or not there were subsequent 19 conversations to this, I don't know. I 20 don't recall. 21 Q. Indeed, one can infer that since 22 you're recalling a discussion where 23 Unioncon told you what you conveyed in 24 this e-mail, that the one conversation you 25 recall occurred prior to August 11th?	248 1 B. Ullmann 2 e-mail, you had already spoken to 3 Unioncon? 4 A. Yes. 5 Q. You've also testified today that 6 you only recall one conversation with 7 Unioncon, correct? 8 MR. HOFFMAN: Objection to 9 the form. 10 A. If I have testified that I only 11 recall one conversation, what I should be 12 specific about is: Yes, I only recall one 13 conversation, which would be this. It 14 does not mean that I'm only recalling or, 15 rather, that I was recalling that it was 16 only one call. This I don't know because 17 there have been five calls; I can only 18 remember these contents. 19 Q. The one call you recall took place 20 before August 11th? 21 A. In looking at the e-mail, I think 22 that is a reasonable conclusion. 23 Q. Do you recall any e-mails with 24 Unioncon following up on this e-mail? 25 A. I don't recall.
247 1 B. Ullmann 2 MR. HOFFMAN: Objection to 3 form. 4 A. It's possible. 5 Q. It's likely? 6 A. It's possible. 7 MR. HOFFMAN: Objection to 8 the form. 9 Q. Is it likely? 10 A. I can't comment on whether it's 11 likely or not. I don't know. 12 Q. Mr. Ullmann, you write to 13 Mr. Wiseman, "Unioncon is resisting 14 arguing that it's unfair as they sold the 15 goods to a legitimate account who, again, 16 sold to a legitimate account"; is that 17 correct? 18 A. Yes. - 19 Q. Would you have any way of knowing 20 that Unioncon is resisting and arguing 21 certain things without having had a 22 communication with Unioncon? 23 A. No. 24 Q. Is it fair to assume, as you sit 25 here today, that when you wrote this	249 1 B. Ullmann 2 Q. You write, "stay tuned"? 3 A. Yes. 4 Q. I'm simply trying to understand 5 what you did to attempt to institute a 6 modest financial penalty of \$25,000; do 7 you recall anything that you did to 8 attempt to institute a modest financial 9 penalty? 10 A. Above and beyond engaging in a 11 conversation that was rebuffed, no. 12 Q. What conversation are you referring 13 to? 14 A. The conversation with Unioncon. 15 Q. That led to you stating Unioncon is 16 resisting, arguing that -- that it's 17 unfair? 18 A. Yes. 19 Q. Where is Unioncon based? 20 A. In Holland. 21 Q. What do they do? 22 A. They sell footwear. 23 Q. Who are you dealing with at 24 Unioncon? 25 A. His name is Joop, J-O-O-P, and

1 B. Ullmann 2 right now his last name eludes me. 3 MR. HOFFMAN: Simons. 4 A. S-I-M-O-N-S. No relations. 5 Q. What was your next communication 6 after August 11th with Issie Wiseman 7 regarding this issue? 8 A. I don't recall. 9 Q. Do you recall having a 10 communication with Issie Wiseman after you 11 sent this e-mail about the modest 12 financial penalty? 13 A. I don't. I don't. 14 Q. You don't recall having any 15 conversations; do you recall any e-mails? 16 A. I don't. 17 Q. Any discussion whatsoever? 18 A. I don't recall. 19 Q. Do you recall indicating to 20 Mr. Wiseman that he shouldn't worry about 21 the \$25,000 because he would more than 22 make that up by amending the agreement to 23 extend the renewal period? 24 A. I absolutely do not recall that and 25 clearly could not have said it because, as	250 1 B. Ullmann 2 Q. Never deliberately? 3 A. Untruthful. 4 Q. I understand that's your testimony. 5 MR. OFFENHARTZ: Off the 6 record. 7 (Time noted: 4:52 p.m.) 8 9 10 BERNT ULLMANN 11 12 Subscribed and Sworn to before me 13 this day of 2007 14 15 16 NOTARY PUBLIC 17 18 19 20 21 22 23 24 25
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1 B. Ullmann 2 we have discussed, the agreements need to 3 be signed by Russell Simmons, by Bob 4 Skinner. 5 There is no way, ever, that I would 6 know how they would ultimately act and if 7 they were both going to sign, so I 8 couldn't have made such statements. 9 Q. Mr. Ullmann, have you ever, in the 10 course of your business dealings, ever 11 stretched the truth or used words a little 12 bit out of context as part of your 13 negotiations? 14 MR. HOFFMAN: Objection to 15 the form. 16 A. We have previously, today, seen one 17 example in the e-mail where I wish I had 18 been more specific with my use of 19 language. I'm never deliberately 20 untruthful. 21 22 23 24 25	251 1 EXHIBITS 2 3 DEFENDANT'S 4 FOR IDENTIFICATION DESCRIPTION PAGE 5 1 Two-page exhibit bearing 76 6 Bates TOR899 and TOR900 7 Three-page exhibit 90 8 Bates PF0130 through 0132 9 3 Four-page document, 95 10 Bates PF0141 through 0144 11 4 Six-page document, 102 12 Bates PF0147 through 0152 13 5 PF0153, one-page document 121 14 6 Four-page document 129 15 Bates-stamped PF0154 16 through 0157 — 17 7 Two-page document, 138 18 Bates PF0164 through 165 19 One-page document, 148 20 Bates PF0162 21 9 E-mail from witness to 161 22 Mr. Gramke 23 E-mail to Mr. Bitton, 191 24 dated January 24, 2007 25 10 PF0194 through 0198 209 26 12 Document Bates 218 27 PF0203 through PF0207 28 Document Bates-stamped 221 29 PF0208 through PF0212 30 31 32 33 34 35
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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 ----- x  
4 PHAT FASHIONS, LLC,

5  
6 Plaintiff,

1:070103278\*\*\*

7 -against-  
8 TORNADO IMPORTS (CANADA), INC.,  
9

10 Defendants.  
11 ----- x  
12

13 CONTINUED DEPOSITION of the Plaintiff, PHAT  
14 FASHIONS, LLC, by BERNT ULLMANN, taken by the  
15 Defendant pursuant to Notice, held at the offices  
16 of Gibson Dunn & Crutcher, 202 Park Avenue, New  
17 York, New York 10166, on November 2, 2007, at  
18 9:10 a.m., before a Notary Public of the State of  
19 New York.

20

21 \*\*\*\*\*

22 - BARRISTER REPORTING SERVICE, INC.

23 120 Broadway

24 New York, N.Y. 10271

25 212-732-8066

1 2 APPEARANCES: 3 4 PRYOR CASHMAN, LLP 5 Attorneys for Plaintiffs 6 410 Park Avenue 7 New York, New York 10022 8 9 BY: PHILIP R. HOFFMAN, ESQ. 10 11 GIBSON DUNN & CRUTCHER 12 Attorneys for Defendants 13 202 Park Avenue 14 New York, New York 10166 15 16 BY: ADAM H. OFFENHARTZ, ESQ. 17 -and- 18 LAURA M. LEITNER, ESQ. 19 20 21 22 23 24 25	279  1 B. Ullmann 2 Mr. Nathanson with the minimum net sales 3 numbers? 4 A. No one did. 5 Q. I'm sorry? 6 A. No one did. 7 Q. No one did. How did he get the 8 minimum net sales figures? 9 A. He probably worked backwards from 10 the royalty numbers. 11 Q. What do you mean by that; could you 12 explain that further, please? 13 A. Yes. The GMRs, guaranteed minimum 14 royalties, are a function, in this case, 15 7 percent of the net sales number. We 16 provided the GMRs and thus he did the math 17 to get the minimum net sales, which is 18 something he very often does. 19 Ultimately, when we are negotiating 20 these deals, we're looking at what our 21 revenue stream is or what our revenue 22 stream will be. The revenue stream is 23 really the GMR and not the net sales, so 24 that's often what's negotiated. And then 25 the net sales become a function of that.
280  1 B. Ullmann 2 BERN T ULLMANN, 3 Having been duly re-sworn before a Notary 4 Public of the State of New York, was 5 examined and testified as follows: 6 7 CONTINUED EXAMINATION 8 BY MR. OFFENHARTZ: 9 Q. Good morning, Mr. Ullmann. 10 A. Good morning. 11 Q. Mr. Ullmann, would you please -- I 12 would like to direct your attention to 13 Defendant's Exhibit No. 3 for a moment. 14 Do you recall looking at this 15 document yesterday? 16 A. I do. 17 Q. Would you turn to the third page of 18 Defendant's Exhibit No. 3, which bears the 19 Bates number PF0142? 20 A. Yes. 21 Q. Eli Nathanson of the Pryor Cashman 22 firm is the person who prepared this 23 document, correct? 24 A. I believe that to be true. 25 Q. Do you know who provided	282  1 B. Ullmann 2 Q. In this instance, the GMR, the 3 guaranteed minimum royalties, is what 4 percent? 5 A. 7. 6 Q. Is 7 percent a standard royalty 7 figure for Phat Fashions? 8 A. It is not. It is lower than our 9 standard. 10 Q. What is your standard? 11 A. 8 percent. 12 Q. I'd like to now direct your 13 attention to Defendant's Exhibit No. 10. 14 A. Thank you. 15 Q. You're welcome. 16 Do you recall reviewing this 17 document yesterday? 18 A. I do. 19 Q. Would you take a moment to look at 20 it again, please? 21 A. Okay. 22 Q. I direct your attention to the 23 second and third paragraphs where you 24 write, "We are getting very close to a 25 situation where you would not be able to

<p>1 B. Ullmann  2 seen the documents either. It  3 sounds to me from what he said and  4 what she read, is that they may not  5 have any mention of Tornado or  6 Vis-a-Vis, but I will under  7 undertake to look at those  8 documents and find out what they  9 contain and if they're responsive,  10 with the appropriate redactions,  11 whatever, produce them to you.  12 Absolutely.</p> <p>13 REQUEST NOTED:</p> <p>14 Q. Do you know what royalties Tornado  15 paid to Phat Fashions in 2006?</p> <p>16 A. Without looking, no.</p> <p>17 Q. What would you look at?</p> <p>18 A. I would ask our CFE to pull the  19 numbers.</p> <p>20 Q. Did you ever find yourself doing  21 that?</p> <p>22 A. Did I ever? I would assume I did.</p> <p>23 Q. He would have provided you the  24 numbers?</p> <p>25 A. Again, yes, I would assume he did.</p>	<p>295</p> <p>1 B. Ullmann  2 MR. HOFFMAN: Objection to  3 the form.  4 A. I seem to recall that the first  5 round of numbers that we discussed seemed  6 very low and, hence, there was a very  7 casual conversation; if we're going to  8 even consider it, you better up your  9 numbers, and that was the end of it. He  10 upped the number hand; that was it.  11 Q. Do you recall ever asking your CFE  12 to provide you with royalty figures or  13 other sales figures regarding Tornado?  14 A. Specifically, no.  15 Q. You said "specifically." Do you  16 think you would have generally?  17 A. I specifically was referring to --  18 I don't think I would have singled out  19 Tornado, but obviously, in the course of  20 business dealings, I would have total  21 revenue conversations with my CFE and the  22 Tornado revenues would be part of our  23 total. But I wouldn't be looking at them  24 specifically.  25 Q. When you recommended to Mr. Skinner</p>
<p>296</p> <p>1 B. Ullmann  2 Q. When you were considering whether  3 or not to continue your relationship with  4 Tornado, did you ask the CFE to give you  5 royalty information regarding Tornado?  6 A. I think that he provided -- I don't  7 know because I'm not sure that I would  8 have, and I'll tell you why I wasn't  9 looking originally at this situation at  10 all when the dialogue started.  11 The contract was expiring at the  12 end of '07. Through our proceedings, I've  13 heard that, I guess, this amendment  14 conversation came to a head early in '06;  15 significantly earlier than when I was  16 prepared to look at it. When it did come  17 to a head, however, it came with a  18 proposal from Issie Wiseman.  19 So there wasn't so much an issue of  20 what the past performance had been. I had  21 the numbers in front of me of what Tornado  22 was proposing the numbers would be going  23 forward.  24 Q. Did those numbers seem sufficient  25 to you?</p>	<p>298</p> <p>1 B. Ullmann  2 that Phat Fashions not proceed with  3 Tornado in Canada, was the amount of sales  4 Tornado was making one of the factors that  5 went into your decision?  6 MR. HOFFMAN: Objection to  7 form. You can answer.  8 A. It could have been one factor and  9 that would be the future promised sales,  10 the guaranteed minimum net sales and the  11 guaranteed minimum net royalties could  12 have been a factor. A factor could have  13 been that Tornado's royalty percentage was  14 7; Bitton royalty percentage is 8. A  15 factor could have been that Bitton, along  16 with the distribution, or rather the  17 wholesale agreement, also offered the  18 opening of three flagship stores in  19 Canada.  20 A factor could have been that there  21 was a conversation with Bitton about  22 opening of a number of freestanding stores  23 in the United States. But factors would  24 probably also have been that we were  25 having increasingly difficult relations</p>

<p>1 B. Ullmann 2 with Tornado; he's had a major falling out 3 with BP Clothing, our largest licensee. 4 During Bitton's due diligence 5 process, they went out to every single one 6 of Tornado's customers, they have a huge 7 report available, very unfavorable to Mr. 8 Wiseman and Tornado and their conduct in 9 the market. 10 I had also received independently, 11 because I do recognize that Mr. Bitton and 12 his group was obviously a party in the 13 process, that they're not necessarily at 14 neutral in the business, but there were 15 also independent conversations from other 16 operators in the market that were not 17 favorable towards Tornado. 18 So there are a lot of things that 19 come into play and I can't recall to which 20 extent either one of them, and maybe more 21 that I'm not mentioning now, played into 22 the final decision. 23 Q. Mr. Ullmann, who would have the 24 most knowledge on Tornado sales of Baby 25 Phat products?</p>	<p>299</p> <p>1 B. Ullmann 2 A. I don't think anyone at Phat 3 Fashions would have that information in 4 totality because our agreement covered 5 only certain part of the Phat Fashions 6 products. The reality is there was a 7 separate agreement, to the best of my 8 understanding, with BP Clothing and I 9 don't know that we would know exactly -- I 10 don't believe we ever saw it. I don't 11 think it's part of our files and we were 12 not involved in that relationship. 13 Q. Mr. Ullmann, is what you're telling 14 me, that there's no one at Phat Fashions 15 who would know the amount of royalties 16 Tornado sent to Phat Fashions in 2006; is 17 that your testimony? 18 MR. HOFFMAN: Objection to 19 the form. 20 A. That wasn't your question, so 21 that's not my testimony. 22 Q. Actually, I think it was my 23 question, but let me ask you again. 24 MR. HOFFMAN: There have 25 been a couple so clear it up.</p> <p>301</p>
<p>1 B. Ullmann 2 MR. HOFFMAN: Objection to 3 the form. Assumes facts not in 4 evidence. 5 A. Run that past me again. 6 Q. Mr. Ullmann, would the CFE be the 7 person who would have the -- the person 8 most knowledgeable regarding Tornado sales 9 of any products under the Phat Fashions 10 rubric? 11 A. Under the Phat Fashions what? 12 Q. Under the Phat Fashions products? 13 MR. HOFFMAN: Under the Phat 14 Fashions rubric, is what he said. 15 Q. Let me give you the question again. 16 Mr. Ullmann, do you know the amount 17 of sales and royalties generated by 18 Tornado in 2006? 19 A. I do not. 20 Q. Who would know that information? 21 A. Probably the Tornado executives 22 would be the closest to know that 23 information accurately. 24 Q. Who, at Phat Fashions, would have 25 that information?</p>	<p>300</p> <p>1 B. Ullmann 2 Q. Mr. Ullmann, who, at Phat Fashions, 3 would know what royalties Tornado sent in 4 2006? 5 A. Our CFE. 6 Q. Certainly, you would consider 7 knowing the amount of royalties you 8 received to be an important data point in 9 a business relationship, wouldn't you? 10 MR. HOFFMAN: Objection to 11 the form. 12 A. Knowing the amount of royalties is 13 an important business point? 14 Q. Yes. 15 A. I concur, yes. But knowing it 16 offhand at any time when you're talking 17 about one out of 30 licensees, I don't 18 know that I agree that that is a springing 19 business point. 20 Q. Do you know what Tornado paid in 21 royalties to Phat Fashions in 2005? 22 A. I don't. 23 Q. In 2004? 24 A. I don't. 25 Q. Do you know what they paid to date</p> <p>302</p>

<p>1 B. Ullmann 2 underwear and loungewear. They have 3 underwear and loungewear sold in the 4 Canadian market right now through a 5 third-party not affiliated with Tornado 6 and they're paying us royalties on those 7 sales. 8 We also have a company called GHG; 9 it's an international bag licensee. They 10 currently have sales in Canada. They are 11 paying us royalties on sales from Canada 12 and, of course, from the rest of the world 13 and the Check Group is paying royalties, 14 of course, on sales also from the U.S. 15 So I believe that was your 16 question; the answer is: Yes, we are. 17 And there may be more; these are the ones 18 I remember. 19 Q. BP Clothing, the royalty rate they 20 provide to Phat Fashions, I assume, is 21 8 percent? 22 A. Yes, that's correct. 23 MR. OFFENHARTZ: Can you 24 read back the last answer. 25 (Whereupon the record was</p>	<p>307 1 B. Ullmann 2 today that you first became aware of 3 Vis-a-Vis on Tuesday of this week; is that 4 correct? 5 A. I believe that is correct. If I've 6 seen it before, I can't recall. 7 Q. Your testimony today regarding 8 Vis-a-Vis having a relationship with BP 9 Clothing, is that something you also 10 learned of Tuesday of this week? 11 A. No, no. I was aware of there being 12 some type of a relationship and of a 13 company -- and I'm not certain how Issie 14 Wiseman is involved, but I certainly was 15 aware that he was involved on some level 16 and that this company had distribution 17 rights for BP in Canada. 18 Q. Which company? You said "this 19 company"; which company? 20 A. Vis-a-Vis, I guess. 21 Q. When were you aware of that? 22 A. I wasn't aware of it being 23 Vis-a-Vis. I was aware of there being a 24 company in Canada where Issie Wiseman had 25 some type of involvement and I was aware</p>
<p>1 B. Ullmann 2 read back by the reporter.) 3 Q. The Check Group pays a royalty rate 4 of 8 percent to Phat Fashions? 5 A. I honestly don't recall. The 6 reason I'm saying that is I'm thinking 7 they're not. They are one of our first 8 licensees. The principal at the time was 9 a partner of Russell's and I have, at 10 least sitting here, a sense that he has a 11 favorable royalty rate. 12 Q. When you say "favorable," do you 13 know how favorable? 14 A. I don't know for a fact. I want to 15 say also because underwear and loungewear 16 is typically not something that's sold a 17 lot on the floors of Macy's. I want to 18 say 6 percent, but it's only an educated 19 guess. 20 Q. GHG had a royalty rate of 8 percent 21 with Phat Fashions? 22 A. No, GHG has a different type 23 arrangement. They pay royalties on FOB 24 sales. I believe the rate is 20 percent. 25 Q. Mr. Ullmann, you testified earlier</p>	<p>308 1 B. Ullmann 2 of this company, that we now know is 3 Vis-a-Vis, they had distribution rights. 4 Q. Mr. Ullmann, you discussed a report 5 by Gaby Bitton on his discussions with 6 customers of Tornado earlier today? 7 A. Yes. Actually -- go ahead. 8 Q. I was going to ask you to elaborate 9 on that. 10 MR. HOFFMAN: I'm going to 11 object to the form. Go ahead. 12 A. What I was going to say is: I 13 don't think that the report was actually 14 compiled by Gaby; I think it was compiled 15 by Isaac. And I believe I misstated his 16 last name yesterday when I referred to 17 Isaac. His correct name is Mimran, 18 M-I-M-R-A-N. It's funny, I just recalled 19 that on the train in this morning. It's 20 weird, I have no idea why or how. 21 Q. Can you elaborate further on this 22 report? 23 MR. HOFFMAN: Objection to 24 the form. 25 A. Well, I've never seen the report so</p>



<p>1 B. Ullmann</p> <p>2 Q. He didn't tell you or you don't</p> <p>3 recall?</p> <p>4 A. No, he didn't tell me. I don't</p> <p>5 know.</p> <p>6 Q. What did you tell Mr. Mimran in</p> <p>7 response to the concerns he raised about</p> <p>8 Phat Fashions, your conversations over the</p> <p>9 last ten days?</p> <p>10 A. I said that I would get back to</p> <p>11 him, which I haven't as yet.</p> <p>12 MR. OFFENHARTZ: Off the</p> <p>13 record.</p> <p>14 (Whereupon a discussion was</p> <p>15 held off the record.)</p> <p>16 Q. What is Gaby Bitton's full name?</p> <p>17 A. If that's not his full name, I</p> <p>18 don't know.</p> <p>19 Q. Do you know if his first name is</p> <p>20 Gabriel?</p> <p>21 A. I don't know.</p> <p>22 MR. OFFENHARTZ: Do you?</p> <p>23 MR. HOFFMAN: Yes, it's</p> <p>24 Gabriel.</p> <p>25 Q. You testified that you also had</p>	<p>315</p> <p>1 B. Ullmann</p> <p>2 Mr. Mimran's report may have been colored</p> <p>3 by history between Mr. Bitton and</p> <p>4 Mr. Wiseman?</p> <p>5 MR. HOFFMAN: Objection to</p> <p>6 the form. You can answer.</p> <p>7 A. I haven't seen the report, so</p> <p>8 there's no way for me to have an opinion</p> <p>9 about the report. But I felt that knowing</p> <p>10 that the agreement was set to expire at</p> <p>11 the end of this year anyway, I felt that</p> <p>12 it was less pertinent to follow up on that</p> <p>13 information.</p> <p>14 Q. Did you inform Mr. Wiseman of the</p> <p>15 conclusions that Mr. Mimran shared with</p> <p>16 you regarding Mr. Mimran's report?</p> <p>17 MR. HOFFMAN: Objection to</p> <p>18 the form.</p> <p>19 A. I don't recall. I could have, but</p> <p>20 I don't recall.</p> <p>21 Q. As you sit here today, do you</p> <p>22 recall any discussions with Mr. Wiseman</p> <p>23 where you expressed dissatisfaction on the</p> <p>24 part of Phat Fashions with the</p> <p>25 relationship between Phat Fashions and</p>
<p>1 B. Ullmann</p> <p>2 independent conversations after learning</p> <p>3 of the report pulled together by Mr.</p> <p>4 Bitton or Mr. Mimran.</p> <p>5 Do you recall that?</p> <p>6 A. Can you please restate your</p> <p>7 question; I'm not understanding.</p> <p>8 MR. OFFENHARTZ: Certainly.</p> <p>9 Strike that. I'll ask it again.</p> <p>10 Q. Did Mr. Bitton provide you with the</p> <p>11 information from the report that was</p> <p>12 prepared or did Mr. Mimran?</p> <p>13 MR. HOFFMAN: Objection to</p> <p>14 the form. Objection to form.</p> <p>15 A. Mr. Mimran did.</p> <p>16 Q. Did you take any independent steps</p> <p>17 following that conversation with</p> <p>18 Mr. Mimran to assess the information</p> <p>19 Tornado was having with its customers?</p> <p>20 A. I did not.</p> <p>21 Q. Did you instruct anyone at Phat</p> <p>22 Fashions to reach out to customers of</p> <p>23 Tornado?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Did you have any concerns that</p>	<p>316</p> <p>1 B. Ullmann</p> <p>2 Tornado?</p> <p>3 A. I believe we had a conversation</p> <p>4 about an oversaturation of product in one</p> <p>5 particular account. This is a while back.</p> <p>6 I want to say the account is either called</p> <p>7 Foot Action or Action Footwear; something</p> <p>8 along those lines. I can't recall the</p> <p>9 exact name.</p> <p>10 This was specifically after someone</p> <p>11 brought to my attention that the product</p> <p>12 didn't look good there and was</p> <p>13 oversaturated. We did also have a</p> <p>14 conversation after Steven Feiner of BP</p> <p>15 Clothing decided to terminate their</p> <p>16 relationship and the conversation was</p> <p>17 centering around the fact that</p> <p>18 Mr. Feiner's expectation was that he could</p> <p>19 more than double the turnover for his</p> <p>20 brand -- for their brand, Baby Phat in</p> <p>21 Canada, while actually improving the</p> <p>22 presentation and integrity of the brand in</p> <p>23 the market. And we did talk about that.</p> <p>24 MR. OFFENHARTZ: Can you</p> <p>25 read that answer back.</p>

<p>1 B. Ullmann  2 (Whereupon the record was  3 read back by the reporter.)  4 Q. When did you have that discussion  5 with Mr. Feiner?  6 A. I can't recall exactly, but I want  7 to say that it's approximately a year ago,  8 so it takes us back some time to maybe  9 September, October, November of '06.  10 Q. Other than these two conversations,  11 do you recall any other conversation you  12 had with anyone at Tornado where you  13 expressed concern or dissatisfaction with  14 the way Tornado was operating as a  15 licensee of Phat Fashions?  16 A. The only person I would have had  17 conversations with would have been Issie  18 Wiseman. So there would have been no one  19 else. There may have been other  20 conversations.  21 I recall a conversation with him  22 about a Randa; she's an owner of a company  23 called Vibe or Vibes in Montreal, Canada.  24 Q. What was the nature of that  25 conversation?</p>	<p>319</p> <p>1 B. Ullmann  2 regarding licensees?  3 A. No.  4 Q. Is there anyone at Phat Fashions  5 who might have additional information  6 regarding such concerns?  7 A. I believe that's unlikely.  8 Q. Mr. Ullmann, can you explain to me  9 your understanding of the relationship  10 between BP Clothing and Vis-a-Vis?  11 MR. HOFFMAN: Objection to  12 the form.  13 A. My understanding is that  14 Vis-a-Vis -- and I've only come to learn  15 very recently that the name of the company  16 was Vis-a-Vis -- that this company was a  17 distributor for BP Clothing.  18 Q. Have you seen any agreements  19 between BP Clothing and Vis-a-Vis?  20 A. I have not.  21 Q. Did BP Clothing pay Phat Fashions  22 royalties on the sale of goods BP Clothing  23 made to Vis-a-Vis?  24 A. I don't know.  25 Q. Who at the company would know?</p>
<p>320</p> <p>1 B. Ullmann  2 A. This is, again, going far back. I  3 can only recall very broad strokes.  4 Something about oversaturation of the  5 brand, the brand not looking good in the  6 market.  7 Q. You mentioned this is going far  8 back; do you know if this is 2004?  9 A. I don't recall.  10 Q. 2005?  11 A. I don't know.  12 Q. You said far back?  13 A. Yes.  14 Q. I'm just trying to --  15 A. It was not in 2007. I would say  16 the very earliest it could have been would  17 be early 2006. Probably more likely 2005  18 to try, but I don't recall it. Sorry.  19 Q. Do you recall any other discussions  20 with Mr. Wiseman where you expressed  21 concern regarding the manner in which  22 Tornado was operating as a licensee of  23 Phat Fashions in Canada?  24 A. No, not as I sit here now.  25 Q. Did you keep a file of concerns</p>	<p>320</p> <p>322</p> <p>1 B. Ullmann  2 A. Maybe our CFE, but only if those  3 sales are broken out.  4 Q. If you were to ask your CFE for a  5 run of royalties received from BP  6 Clothing, can he provide those to you?  7 A. Yes.  8 Q. If you asked your CFE to provide  9 you with a run of royalties paid by BP  10 clothing based on territory, could he do  11 that?  12 A. Probably not.  13 Q. Could he provide you a run on  14 royalties made by BP Clothing broken down  15 by product line?  16 A. Run that past me again.  17 MR. OFFENHARTZ: Can you  18 read the question, please.  19 (Whereupon the record was  20 read back by the reporter.)  21 A. If by "product line," you mean  22 jeans, T-shirts, the answer is no, he  23 couldn't.  24 Q. How could he break it down?  25 MR. HOFFMAN: Objection to</p>

<p>1 B. Ullmann  2 the form.  3 A. It's a total.  4 Q. A total for Baby Phat?  5 A. A total for Baby Phat grants that  6 they have, yes.  7 Q. Who is the current CFE?  8 MR. HOFFMAN: Of which  9 company?  10 Q. Who is the current CFE of Phat  11 Fashions?  12 A. Bob Bruno.  13 Q. Who is the current CFE of Kellwood?  14 A. Craig Kleffner, K-L-E-F-F-N-E-R.  15 Q. Over recent series of questions I  16 have asked you and in your answers, we've  17 both been referring to the CFE.  18 Were you referring to the CFE of  19 Phat Fashions or the CFE of Kellwood or  20 both?  21 A. I was referring to the CFE of Phat  22 Fashions, but not Bob Bruno.  23 Q. Why is that?  24 A. Because Bob Bruno is new in his  25 position and our old CFE, Peter Morris, is</p>	<p>323</p> <p>1 B. Ullmann  2 with or that you're displeased with?  3 A. Based upon personal interaction.  4 Q. Personal interaction with whom?  5 A. The licensee.  6 Q. Can you tell me about your personal  7 interaction with Issie Wiseman?  8 MR. HOFFMAN: Objection to  9 the form. Go ahead.  10 A. I can, it's very open-ended. Do  11 you want to know from the beginning of our  12 relationship?  13 Q. Why don't you tell me about the  14 communications you've had with Mr. Wiseman  15 in 2006?  16 MR. HOFFMAN: Other than  17 what was testified to yesterday?  18 MR. OFFENHARTZ: No,  19 actually --  20 Q. Mr. Ullmann, please tell me about  21 your communications with Mr. Wiseman in  22 2006.  23 MR. HOFFMAN: I object on  24 the ground of asked and answered.  25 He can answer it again.</p> <p>325</p>
<p>1 B. Ullmann  2 no longer with the company.  3 MR. HOFFMAN: As I've  4 represented to you, Adam, I will  5 reach out to find Peter Morris and  6 set up a date for a deposition.  7 MR. OFFENHARTZ: Thank you.  8 THE WITNESS: He'll love  9 that, now that he's not with the  10 company anymore.  11 MR. HOFFMAN: I will  12 endeavor with him to set up a date  13 and we'll go from there.  14 Q. Does Phat Fashions provide annual  15 evaluations of its licensees?  16 A. No.  17 Q. Does Phat Fashions provide  18 quarterly evaluations of its licensees?  19 A. No.  20 Q. Does Phat Fashions have any  21 internal process whereby it reviews its  22 licensees on a regular basis?  23 A. No.  24 Q. How do you go about determining  25 which of your licensees you're pleased</p>	<p>324</p> <p>1 B. Ullmann.  2 A. I can't recall, obviously, the full  3 nature of all conversations, but as  4 discussed yesterday, there was  5 communication back and forth in '06 about  6 Issie Wiseman attempting to renew a  7 license that was expiring and didn't  8 provide for an option to renew. He  9 attempted to do this very early and  10 outside the customary window. As you  11 heard yesterday, I, therefore, didn't  12 necessarily immerse myself in this  13 dialogue, but moved it forward internally.  14 We had some dialogue surrounding  15 him losing the Baby Phat products and we  16 had dialogue when I assisted him in  17 obtaining the license for Coogi and I  18 specifically assisted him, and I have come  19 to understand that he is now a licensee of  20 the Coogi brand. That's some of the  21 dialogue that I can recall.  22 Q. Are there any dialogues that you  23 can recall that you have not included in  24 your answer?  25 A. Not deliberately.</p> <p>326</p>

<p>1 B. Ullmann 2 agreement in place and clearly any payment 3 is a royalty payment. It's not a 4 commission. There are no net commissions; 5 they're royalty payments. 6 Q. What is the royalty rate indicated 7 on this document? 8 A. 7 percent. 9 MR. HOFFMAN: Objection to 10 the form. 11 Q. The 7 percent royalty rate for 12 Tornado was established by the license 13 agreement; is that your understanding? 14 MR. HOFFMAN: Objection to 15 the form. 16 A. That is my understanding. 17 Q. The 7 percent rate that Vis-a-Vis 18 was paying was established by that license 19 agreement as well? 20 MR. HOFFMAN: Objection to 21 the form. 22 A. Phat Fashions does not have a 23 licensing agreement with Vis-a-Vis, so no, 24 that is not correct. I'm going to assume 25 that the term "commission" is probably</p>	<p>339</p> <p>1 B. Ullmann 2 MR. HOFFMAN: Objection to 3 the form. 4 A. I understand that we were receiving 5 some payments. I did not know they were 6 from a company called Vis-a-Vis and I have 7 always assumed that they were tying back 8 to the relationship that this entity had 9 with some of our licensors in the 10 territory. 11 Q. Which licensor? 12 A. BP Clothing, for example, would be 13 probably the biggest one. 14 Q. This company that you have now 15 learned is Vis-a-Vis, Phat Fashions had 16 been receiving payments from them for 17 several years; isn't that the case? 18 MR. HOFFMAN: Objection to 19 the form. Asked and answered. 20 Isn't that the identical 21 question you just asked? 22 Q. Can you answer the question? 23 THE WITNESS: Can you please 24 read it back to me. 25 (Whereupon the record was</p> <p>341</p>
<p>1 B. Ullmann 2 accurate on the Vis-a-Vis statement 3 because there is no licensing agreement in 4 place; hence, there are no royalties. 5 Q. Not accurate on the PF0085 6 document? 7 A. Correct. 8 Q. Do you know why the word "Tornado" 9 is written on top of Vis-a-Vis Fashions? 10 A. I don't know who wrote it, so I 11 obviously don't know why it's written 12 here. 13 Q. Can you explain to me how the 14 royalty rate of 7 percent was established 15 for Vis-a-Vis? 16 MR. HOFFMAN: Objection to 17 the form. That's not what it says. 18 A. I'm sure you meant to say how the 19 rate of commission was established at 20 7 percent and I don't know how that rate 21 was established. 22 Q. Do you understand that you, Phat 23 Fashions, was receiving a stream of 24 payments from a company called Vis-a-Vis 25 over several years?</p>	<p>340</p> <p>1 B. Ullmann 2 read back by the reporter.) 3 A. I am under the impression that we 4 have received payments from an entity in 5 Canada from Baby Phat sales. 6 Q. You now understand that entity is 7 called Vis-a-Vis? 8 A. Yes. 9 Q. Can you tell me what your 10 understanding is of the relationship 11 between Vis-a-Vis and Issie Wiseman? 12 MR. HOFFMAN: Objection to 13 the form. You can answer. 14 A. I believe Issie Wiseman is a 15 partner or a part-owner involved in some 16 type of principal capacity. 17 Q. When did you come to that 18 understanding? 19 A. When he called me sometime in the 20 fall of 2006 to share with me that he was 21 in the process of losing the rights to 22 Baby Phat products in Canada. 23 Q. Over the years that you were 24 receiving payment from the company that 25 you then came to learn was known as</p> <p>342</p>

<p>1 B. Ullmann  2 but certainly it would have been a  3 discussion point then and, again, there  4 was a discussion point when I, in the fall  5 of 2006, was reviewing the options that we  6 had for Canada and we reviewed the  7 relationship with Tornado and Issie  8 Wiseman.</p> <p>9 Q. Which Counsel provided you the  10 advice, the information -- whichever word  11 you'd like to use -- in 2004?</p> <p>12 A. That would probably have been done  13 Gramke, possibly also with Eli Nathanson.</p> <p>14 Q. In fall of 2006?</p> <p>15 A. I want to say that it was Eli  16 Nathanson and Luther Rollins.</p> <p>17 Q. Independent of your discussions  18 with Counsel, do you have any  19 understanding of the nature of the  20 relationship between Vis-a-Vis and Phat  21 Fashions?</p> <p>22 MR. HOFFMAN: Objection to  23 the form. Asked and answered. You  24 can answer.</p> <p>25 A. I don't consider there to be any</p>	<p>395</p> <p>1 B. Ullmann  2 A. I am not familiar with the nature  3 that has led to the payments. We have a  4 number of licensees that controlled  5 product that is being sold in Canada and  6 it appears that Vis-a-Vis has struck  7 relationships, distribution agreements,  8 sub-agreements -- I don't know what they  9 are -- with several of these licensees and  10 engaged in sales of Baby Phat products.</p> <p>11 Q. Independent of your discussions  12 with Counsel, do you have any  13 understanding of the basis by which  14 Vis-a-Vis sends money to Phat Fashions?</p> <p>15 MR. HOFFMAN: Objection to  16 the form. Asked and answered. You  17 can answer it again.</p> <p>18 A. I don't and I would think that  19 there is no such relationship. As I've  20 testified to earlier, Issie Wiseman  21 initiated this renewal conversation, which  22 was an amendment unsolicited. I think if  23 he felt that there was a formal  24 relationship that was unclear or needed  25 clarification or there was a type of</p>
<p>1 B. Ullmann  2 relationship between Vis-a-Vis and Phat  3 Fashions.</p> <p>4 Q. Do you know how much money  5 Vis-a-Vis has sent to Phat Fashions over  6 the years?</p> <p>7 A. I don't.</p> <p>8 Q. Do you think it's more than \$50?</p> <p>9 A. I do believe that.</p> <p>10 Q. Do you think it's more than  11 \$100,000?</p> <p>12 A. Based upon the documents I have  13 reviewed here, I think it's more than  14 that.</p> <p>15 Q. Do you think it's more than \$1  16 million?</p> <p>17 A. I don't know.</p> <p>18 Q. You would consider receiving  19 regular payments from a company that may  20 well total hundreds of thousands of  21 dollars, if not more than a million  22 dollars, to, in no way, constitute a  23 relationship?</p> <p>24 MR. HOFFMAN: Objection to  25 the form.</p>	<p>396</p> <p>1 B. Ullmann  2 relationship, he would have included in  3 that process all the products that he was  4 representing, but he didn't. I have  5 absolutely no reason to think that there  6 was a need for any different type of  7 relationship.</p> <p>8 MR. OFFENHARTZ: Move to  9 strike as not responsive.</p> <p>10 MR. HOFFMAN: I think it was  11 very responsive.</p> <p>12 Q. You seem now to have a recollection  13 of Mr. Wiseman's discussions with you -- a  14 further recollection of one of your  15 discussions with Mr. Wiseman about  16 renewal?</p> <p>17 MR. HOFFMAN: Objection.</p> <p>18 Q. Do you recall any additional  19 information about any discussions you had  20 with Mr. Wiseman regarding renewal?</p> <p>21 MR. HOFFMAN: Object to the  22 form. Part of the first question  23 and form.</p> <p>24 A. I do recall speaking to Mr. Wiseman  25 in February of 2007, after he had been</p>

<p style="text-align: right;">399</p> <p>1                   B. Ullmann    2 advised that the amendment would not be    3 executed.    4 Q. Prior to that?    5 A. And I remember, at that time, he    6 did not once, during our four-day stay in    7 Las Vegas, bring up the fact that he was    8 under the impression that he had already    9 renewed the agreement back in 2006. I do    10 recall that.    11           I also recall, if I could expand,    12 he did ask, and I think I mentioned this    13 before, if I thought there was a    14 possibility that he could have footwear    15 going forward. It was his opinion that    16 the Gaby Bitton Group was not particularly    17 strong in footwear. I know we had a    18 footwear conversation and that was also in    19 February of 2007.    20 Q. Did you ever tell Mr. Wiseman that    21 Russell Simmons executed the amendment    22 renewing the license agreement for two- or    23 three-year periods?    24           MR. HOFFMAN: Objection to    25 the form.</p>	<p style="text-align: right;">401</p> <p>1                   B. Ullmann    2 Mr. Simmons executed the agreement, shall    3 we?    4 A. I'm ready.    5 Q. You have what's been marked as    6 Defendant's Exhibit 6 in front of you?    7 A. Yes.    8 Q. You see that Russell Simmons did    9 sign this document on page 0157?    10 A. That is correct.    11 Q. Did you ever tell Mr. Wiseman that    12 Russell Simmons signed this document?    13 A. I was not aware that Russell    14 Simmons had signed this document, so    15 consequently, I never advised Issie    16 Wiseman that he had signed it.    17 Q. Do you know if anyone else at Phat    18 Fashions advised Mr. Wiseman that Russell    19 Simmons had signed this document?    20 A. I don't know.    21 Q. Do you know if anyone at Pryor    22 Cashman informed Issie Wiseman that    23 Russell Simmons signed this document?    24 A. I don't know, but the complete    25 advisement would then have to include that</p>
<p style="text-align: right;">400</p> <p>1                   B. Ullmann    2 Q. Did you; yes or no? Did you?    3           THE WITNESS: Can you please    4 read the question back.    5           (Whereupon the record was    6 read back by the reporter.)    7 A. I am not clear to the question.    8 Are you asking if Issie Wiseman knew that    9 Russell Simmons was one of the people    10 signing, or are you asking if I told Issie    11 Wiseman that Russell Simmons had signed    12 the amendments extending the agreement --    13 or rather providing for a new amendment    14 commencing in '08?    15 Q. It seems to be when the court    16 reporter read back the question, she said    17 the question was: "Did you ever tell    18 Mr. Wiseman that Russell Simmons executed    19 the amendment renewing the license    20 agreement for two- or three-year periods."    21 A. It's the periods I'm not    22 understanding. It sounds like it's a    23 general --    24 Q. I very much welcome your follow-up    25 question. Let's look at the exhibit when</p>	<p style="text-align: right;">402</p> <p>1                   B. Ullmann    2 Mr. Skinner had not signed the contract.    3 Q. Mr. Ullmann, was my question at all    4 unclear to you; did you not understand    5 when I said that Russell Simmons had    6 signed it?    7           Maybe it would be helpful if I    8 could learn if when I said, "Did anyone    9 tell him that Mr. Simmons signed the    10 contract," I don't know why that was    11 unclear and I think it will help me in the    12 future times, when I get to ask you    13 questions in this case, if you could    14 explain to me why, when I ask you, did    15 Russell Simmons sign that, you seem so    16 unable to understand that.    17           The question is: Did you tell    18 someone Russell Simmons signed?    19           MR. HOFFMAN: I object to    20 the form. It's argumentative.    21 A. Okay. I wasn't clear and maybe    22 it's a simple thing as the language    23 barrier. I was not clear if your question    24 earlier was general or it was specific.    25 When you pulled out the exhibit, I</p>